

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 18-CV-0298-CVE-JFJ

- - - - -X
RICHARD FELTZ, et al., :
On behalf of himself :
and all others :
similarly situated, :
Plaintiff :
VS :
BOARD OF COUNTY COMMISSIONERS :
OF TULSA COUNTY, et al., :
Defendants :

- - - - -X

Videotaped deposition of

JUDGE WILLIAM J. MUSSEMAN, JR.

taken via videoconference before Clifford Edwards,
Certified Shorthand Reporter and Notary Public, on
December 16, 2020, at 10:09 a.m.

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S: (all via videoconference)</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS:</p> <p>4 ALLISON HOLT RYAN, ESQ.</p> <p>5 GARY YEUNG, ESQ. (NY Office)</p> <p>6 MICHELLE A. KISLOFF, ESQ.</p> <p>7 ANNEKE BARAN ALTIERI, ESQ.</p> <p>8 HOGAN LOVELLS US LLP</p> <p>9 555 Thirteenth Street, NW</p> <p>10 Washington, DC 20004</p> <p>11 allison.holt-ryan@hoganlovells.com</p> <p>12 michelle.kisloff@hoganlovells.com</p> <p>13 anneke.altieri@hoganlovells.com</p> <p>14</p> <p>15 HAYLEY HOROWITZ, ESQ.</p> <p>16 STILL SHE RISES</p> <p>17 567 E 36th St N</p> <p>18 Tulsa, Oklahoma 74106</p> <p>19 hayleyh@stillsherises.org</p> <p>20</p> <p>21 ON BEHALF OF THE DEFENDANT STATE JUDGES:</p> <p>22 ERIN MOORE, ESQ.</p> <p>23 ASSISTANT ATTORNEY GENERAL</p> <p>24 STEFANIE LAWSON, ESQ.</p> <p>25 ASSISTANT ATTORNEY GENERAL</p> <p>DEVAN PEDERSON, ESQ.</p> <p>ASSISTANT ATTORNEY GENERAL</p> <p>OKLAHOMA ATTORNEY GENERAL'S OFFICE</p> <p>313 N.E. 21st St.</p> <p>Oklahoma City, Oklahoma 73105</p> <p>stefanie.lawson@oag.ok.gov</p> <p>erin.moore@oag.ok.gov</p> <p>devan.pederson@oag.ok.gov</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX OF EXAMINATION</p> <p>2 PAGE</p> <p>3 DIRECT EXAMINATION BY MS. RYAN 8</p> <p>4 CROSS-EXAMINATION BY MR. WILSON 145</p> <p>5</p> <p>6 INDEX OF EXHIBITS</p> <p>7 Plaintiff's Exhibit PAGE</p> <p>8 Musseman No. 1, Affidavit of William</p> <p>9 Musseman dated April 15, 2019 37</p> <p>10 Musseman No. 2, Declaration of William</p> <p>11 Musseman 38</p> <p>12 Musseman No. 3, AO-2018-09 Administrative</p> <p>13 Order Establishment of Bond</p> <p>14 Docket 75</p> <p>15 Musseman No. 4, AO-2018-10 Amended</p> <p>16 Administrative Order Regarding</p> <p>17 Pretrial Release Program 75</p> <p>18 Musseman No. 5, Rule CR 2. Pre-established</p> <p>19 Bail and Initial Appearance 119</p> <p>20 Musseman No. 6, Tulsa County District Court,</p> <p>21 Bench Card: Judicial Guide to</p> <p>22 Bond Docket 135</p> <p>23 (Reporter's Note: Exhibits marked remotely and</p> <p>24 forwarded to US Legal Support for production.)</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 ON BEHALF OF THE DEFENDANT BOARD OF COUNTY</p> <p>2 COMMISSIONERS AND THE SHERIFF:</p> <p>3 DOUGLAS WILSON, ESQ.</p> <p>4 ASSISTANT DISTRICT ATTORNEY</p> <p>5 DISTRICT ATTORNEY'S OFFICE</p> <p>6 500 S. Denver Ave. Ste. 900</p> <p>7 Tulsa, Oklahoma 74103</p> <p>8 douglas.wilson@tulsacounty.org</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 STEVE DeCANIO, VIDEOGRAPHER</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: We are now on the</p> <p>2 record. This is the remote</p> <p>3 video-recorded deposition of Judge</p> <p>4 William J. Musseman, Jr. Today is</p> <p>5 Wednesday, December 16, 2020. The time</p> <p>6 is now 10:09 a.m. Eastern Time Zone.</p> <p>7 We are here in the matter of Feltz</p> <p>8 vs. Board of County Commissioners of the</p> <p>9 County of Tulsa.</p> <p>10 My name is Steve DeCanio, remote</p> <p>11 video technician on behalf of U.S. Legal</p> <p>12 Support.</p> <p>13 At this time the court reporter,</p> <p>14 Cliff Edwards, on behalf of U.S. Legal</p> <p>15 Support, will please enter the statement</p> <p>16 for remote proceedings into the record so</p> <p>17 we may begin.</p> <p>18 COURT REPORTER: The attorneys</p> <p>19 participating in this deposition</p> <p>20 acknowledge that I am not physically</p> <p>21 present in the deposition room and that</p> <p>22 I'll be reporting this deposition</p> <p>23 remotely.</p> <p>24 They further acknowledge that, in</p> <p>25 lieu of in-person testimony, I will report in person,</p>

<p style="text-align: right;">Page 10</p> <p>1 response to that question.</p> <p>2 A I will.</p> <p>3 Q Is there any reason why you can't give</p> <p>4 full, complete, and accurate testimony today?</p> <p>5 A Faded memory would be the biggest</p> <p>6 impediment.</p> <p>7 Q And if you can't remember something,</p> <p>8 you'll let me know?</p> <p>9 A I will, yes, ma'am.</p> <p>10 Q Perfect.</p> <p>11 But otherwise, there's nothing that's</p> <p>12 prohibiting you from being able to give true and</p> <p>13 correct testimony today?</p> <p>14 A No, ma'am.</p> <p>15 Q Great.</p> <p>16 All right. Did you prepare for this</p> <p>17 deposition?</p> <p>18 A Yes.</p> <p>19 Q And what did you do to prepare?</p> <p>20 A I read the Local Criminal Rule 1 and</p> <p>21 Local Criminal Rule 2.</p> <p>22 I read my previous -- I think there were</p> <p>23 two affidavits I'd signed in this case. I read</p> <p>24 those.</p> <p>25 I reviewed -- I reviewed the -- a couple</p>	<p style="text-align: right;">Page 12</p> <p>1 for this deposition?</p> <p>2 A Yes, ma'am.</p> <p>3 Q How many times?</p> <p>4 A One time.</p> <p>5 Q And about how long was that meeting?</p> <p>6 A Forty-five minutes.</p> <p>7 Q Okay.</p> <p>8 A That is my best guess.</p> <p>9 Q Understood.</p> <p>10 And was there anyone else in that meeting</p> <p>11 with you and counsel, besides you and counsel?</p> <p>12 A No.</p> <p>13 Q Okay. And have you discussed --</p> <p>14 A I wasn't even -- I wasn't in the room</p> <p>15 with them. I -- it was by -- I think it was by a</p> <p>16 Microsoft Teams.</p> <p>17 Q Okay. Thank you for that clarification.</p> <p>18 But no one else was in the Teams meeting</p> <p>19 besides you and counsel?</p> <p>20 A Correct.</p> <p>21 Q And have you discussed your deposition</p> <p>22 with anyone else besides counsel?</p> <p>23 A No, ma'am.</p> <p>24 Q Great.</p> <p>25 All right. I'd like to cover some</p>
<p style="text-align: right;">Page 11</p> <p>1 statutes that deal with responsibilities and</p> <p>2 authority of the presiding judge. I'm not the</p> <p>3 presiding judge now, and I refreshed my memory as to</p> <p>4 the -- those statutes.</p> <p>5 Q Oklahoma State Statutes?</p> <p>6 A And I --</p> <p>7 Q I'm sorry, Judge Musseman.</p> <p>8 Oklahoma State Statutes; is that right?</p> <p>9 A Yes, ma'am.</p> <p>10 Q Okay.</p> <p>11 A And I looked at a couple of AOs just to</p> <p>12 jog my memory back of, you know, 2017/2018 time</p> <p>13 frame.</p> <p>14 Q Okay. Did you --</p> <p>15 A AOs are administrative orders.</p> <p>16 I'm sorry.</p> <p>17 Q Yeah. No, no, no. And, in fact, we're</p> <p>18 going to be talking about those AOs. I -- we'll --</p> <p>19 we'll get to that in a minute.</p> <p>20 I want to make sure that we use the same</p> <p>21 language when we talk about things today, but thank</p> <p>22 you.</p> <p>23 Any -- anything else that you reviewed?</p> <p>24 A Not that I remember, no.</p> <p>25 Q Did you meet with counsel in preparation</p>	<p style="text-align: right;">Page 13</p> <p>1 background material to start. So I just want to</p> <p>2 make sure that I have every -- my research correct</p> <p>3 on this.</p> <p>4 Am I right that you have served as a</p> <p>5 judge in Tulsa County since 2009?</p> <p>6 A Yes, ma'am.</p> <p>7 Q And prior to that, you were an ADA in</p> <p>8 Tulsa County?</p> <p>9 A Yes, ma'am.</p> <p>10 Q And during your time as an ADA, you</p> <p>11 overlapped with Judge Guten for a period of time; is</p> <p>12 that right?</p> <p>13 A I think so. But I don't remember if he</p> <p>14 was an intern or a DA.</p> <p>15 Q You -- did you work with him when you</p> <p>16 were in the ADA's office?</p> <p>17 A No. I -- it -- it's a big office, and he</p> <p>18 was never on my team. I don't -- I think he might</p> <p>19 have even been at juvenile. I -- I think we were in</p> <p>20 the same office at the same time.</p> <p>21 Q Got it.</p> <p>22 A But that's about it.</p> <p>23 Q Did you have any other legal work</p> <p>24 experience between law school and joining the -- the</p> <p>25 DA's office?</p>

Exhibit 7

<p style="text-align: right;">Page 14</p> <p>1 A Legal work experience?</p> <p>2 Q Right.</p> <p>3 Did you hold -- did you practice as an</p> <p>4 attorney --</p> <p>5 A No.</p> <p>6 Q -- between the time you graduated law</p> <p>7 school and starting at the D -- DA's office?</p> <p>8 A No.</p> <p>9 Q And so in 2009, you became a Tulsa County</p> <p>10 district court special judge; is that right?</p> <p>11 A Correct.</p> <p>12 Q And how did you obtain that position?</p> <p>13 A I applied for it and was interviewed by</p> <p>14 the district judges in the interview process. I was</p> <p>15 selected.</p> <p>16 Q And am I right that in 2010, you became a</p> <p>17 Tulsa County district court judge?</p> <p>18 A Yes, ma'am.</p> <p>19 Q And that was an elected position?</p> <p>20 A It was. I was elected in 2010 and sworn</p> <p>21 in to begin in January of 2011.</p> <p>22 Q So between 2009 and 2011, when you were a</p> <p>23 special judge, what dockets did you preside over?</p> <p>24 A The family docket, generally divorces,</p> <p>25 but paternities. It -- it's the divorce docket, if</p>	<p style="text-align: right;">Page 16</p> <p>1 after they have been through the initial appearance,</p> <p>2 the arraignment, the preliminary hearing.</p> <p>3 If there's a preliminary hearing bind</p> <p>4 over, the case comes for district court arraignment,</p> <p>5 and then that felony criminal judge would have the</p> <p>6 case from there, whether it's for disposition or</p> <p>7 trial. If it's for disposition or even trial, you</p> <p>8 would -- you would handle the effects afterwards, if</p> <p>9 there's applications to revoke based upon probation</p> <p>10 violations.</p> <p>11 I'm -- I'm -- I'm not giving you all the</p> <p>12 details --</p> <p>13 Q That's okay.</p> <p>14 A -- but I don't want to talk for 20</p> <p>15 minutes explaining. I think you get the picture.</p> <p>16 Q I do. I think that was a very helpful</p> <p>17 answer. Thank you.</p> <p>18 So between -- we just mentioned -- I</p> <p>19 mentioned it -- you mentioned a moment ago that you</p> <p>20 began serving as the presiding judge in</p> <p>21 January 2018.</p> <p>22 We're going to talk about your</p> <p>23 administrative responsibilities in a minute, but did</p> <p>24 your docket responsibilities change when you began</p> <p>25 serving as presiding judge in January 2018?</p>
<p style="text-align: right;">Page 15</p> <p>1 you will.</p> <p>2 Then after I was elected, but before I</p> <p>3 was sworn in, when I was still a special judge, I</p> <p>4 did the protective order docket for two months while</p> <p>5 that judge was out for medical leave.</p> <p>6 Q And then you began serving as the</p> <p>7 presiding judge of the district court in</p> <p>8 January 2018; is that right?</p> <p>9 A Yes.</p> <p>10 Q And you held that position until</p> <p>11 January 2020?</p> <p>12 A Yes.</p> <p>13 Q So from the time that you were sworn in</p> <p>14 in 2011 to be a district court judge, until you</p> <p>15 began serving as the presiding judge in</p> <p>16 January 2018, what dockets did you preside over?</p> <p>17 A Criminal felony.</p> <p>18 Q Okay. And what part of the criminal</p> <p>19 process did the criminal felony docket oversee? So</p> <p>20 for instance, did you oversee arraignments? Did you</p> <p>21 oversee preliminary hearings? Did you just oversee</p> <p>22 trials?</p> <p>23 What was a part of your docket at that</p> <p>24 time?</p> <p>25 A Criminal felony docket deals with cases</p>	<p style="text-align: right;">Page 17</p> <p>1 A No.</p> <p>2 Q So you continued to maintain your</p> <p>3 criminal felony docket at that -- that time; is that</p> <p>4 right?</p> <p>5 A Yes.</p> <p>6 Q And you still maintain that docket now?</p> <p>7 A No.</p> <p>8 Q So after you -- when did that change?</p> <p>9 A There was a retirement of a senior judge,</p> <p>10 senior to me. I can't remember the day. I think it</p> <p>11 was the end of March. But I took over her civil</p> <p>12 docket in April. It was more of a process than an</p> <p>13 event. I maintained the criminal docket in full</p> <p>14 effect and did that civil docket as I could for</p> <p>15 months until we were able to shut down my criminal</p> <p>16 docket. But I was off of that docket, I no longer</p> <p>17 had docket responsibilities, I think, effective</p> <p>18 first of September. And whether there's a holiday</p> <p>19 in there -- it was September 1 or September 4, but</p> <p>20 it would -- first of September, we had come -- had</p> <p>21 my docket -- criminal docket shut down from any</p> <p>22 further computer assignments. And I had assigned</p> <p>23 out the cases on my docket, but for a handful of</p> <p>24 trials that probably are just easier for me to keep</p> <p>25 than to give flight instructors</p>

<p style="text-align: right;">Page 18</p> <p>1 Q I understand. If at any point prior --</p> <p>2 strike that.</p> <p>3 So we're here on some litigation. Do you</p> <p>4 have a sense of what this litigation is about?</p> <p>5 A A sense, yes, but what -- I don't know.</p> <p>6 I -- it -- it's about -- it's about the bond docket.</p> <p>7 Q Okay.</p> <p>8 A That's what I know, and I understand that</p> <p>9 would be a pedestrian explanation in your mind of</p> <p>10 what this lawsuit is about.</p> <p>11 Q For purposes of this discussion, that is</p> <p>12 entirely fair.</p> <p>13 So prior to your serving as presiding</p> <p>14 judge in January 2018, did you ever set bond</p> <p>15 amounts?</p> <p>16 A Yes.</p> <p>17 Q As what part of your responsibilities?</p> <p>18 A The applications to accelerate or revoke</p> <p>19 probations on those felony matters where there was</p> <p>20 dispositional resolution that resulted in probation,</p> <p>21 when the State would file applications supported by</p> <p>22 probable cause that they had violated the rules of</p> <p>23 probation, I would issue the warrant and set bond on</p> <p>24 those probation violation applications.</p> <p>25 Q Any other circumstances where you would</p>	<p style="text-align: right;">Page 20</p> <p>1 preliminary hearing and they appear in front of a</p> <p>2 district court, if it's not a case where they have</p> <p>3 resolved it and there was a disputed hearing at the</p> <p>4 preliminary hearing level, many times there would be</p> <p>5 continued requests for bond.</p> <p>6 Even at the district level, bond is --</p> <p>7 it's a fluid -- it's a fluid dynamic. People's</p> <p>8 lives change, support changes, family moves in and</p> <p>9 out of jurisdictions. So it's not unusual that</p> <p>10 there would be multiple requests for bond hearings</p> <p>11 or extra modifications to a bond or release, even</p> <p>12 once they show up to district court but before trial</p> <p>13 or even plea.</p> <p>14 That -- really, that is a fringe part or</p> <p>15 a -- you know, you could -- it's a very small part</p> <p>16 of the general docket that a felony criminal judge</p> <p>17 handles, but it's still -- it's ever -- ever</p> <p>18 present, and it's something you deal with weekly.</p> <p>19 Q That's -- that's very helpful.</p> <p>20 So perhaps a more fair thing to say is</p> <p>21 it's not something that was a part of your everyday</p> <p>22 responsibilities, but it was something that you</p> <p>23 handled as a part of your responsibilities?</p> <p>24 A I believe that to be more accurate.</p> <p>25 Q Okay. And so it -- did you handle bond</p>
<p style="text-align: right;">Page 19</p> <p>1 set bond?</p> <p>2 A I'm sorry. Could you speak up?</p> <p>3 Q Of course.</p> <p>4 Any other circumstances where you would</p> <p>5 set bond?</p> <p>6 A You know, in the day-to-day life of state</p> <p>7 court, you would cover dockets or you would have</p> <p>8 requests from officers that needed a judge, and they</p> <p>9 couldn't find anyone else, and they would present</p> <p>10 warrants and ask for bonds.</p> <p>11 So in that situation, I -- I've signed</p> <p>12 warrants and issued bonds with those warrants,</p> <p>13 warrants for arrest.</p> <p>14 Q I understand.</p> <p>15 Is it fair to say it wasn't a part of</p> <p>16 your general docket work or part of your general</p> <p>17 responsibilities dealing with the setting of bond</p> <p>18 for pretrial detention prior to becoming presiding</p> <p>19 judge?</p> <p>20 A I'm not comfortable saying that, but</p> <p>21 it's -- it's accurate. It --</p> <p>22 Q Okay.</p> <p>23 A -- was a very fringe, but present, part</p> <p>24 of the job, because even when they would be bound</p> <p>25 over -- when individuals are bound over from</p>	<p style="text-align: right;">Page 21</p> <p>1 modification-type motions when you were presiding</p> <p>2 over your felony docket?</p> <p>3 A Yes.</p> <p>4 Q And when you were presented with one of</p> <p>5 those motions, what was the process after you</p> <p>6 received the motion, not your deliberative process,</p> <p>7 but the legitimate -- you had -- it has been filled.</p> <p>8 What is the next step?</p> <p>9 A It was case by case. And please</p> <p>10 understand that many times, if not most times, I</p> <p>11 would, in fact, say that it is a rarity that it was</p> <p>12 filed.</p> <p>13 Q Okay.</p> <p>14 A The attorney would ask for it orally, and</p> <p>15 it was a case-by-case basis.</p> <p>16 Sometimes when the attorney asked for it,</p> <p>17 the attorney would say, you know, Judge, I -- I</p> <p>18 would like to set this for hearing, but I need a</p> <p>19 little bit of time to follow up with these witnesses</p> <p>20 and see if they say what my client claims they say.</p> <p>21 Other times the attorney had all the</p> <p>22 information and was ready to go that day if I would</p> <p>23 hear it. And if the DA, if the prosecutor wanted a</p> <p>24 day or two before answering, I would give them a day</p> <p>25 or two.</p>

Exhibit 7

<p style="text-align: right;">Page 22</p> <p>1 Usually, in fact, I would say north of</p> <p>2 90 percent of the time, the DA's office felt fine</p> <p>3 with the information that they had in front of them,</p> <p>4 and we would do it on the spot or that day at the</p> <p>5 docket.</p> <p>6 Q So when you say "it," you would do "it"</p> <p>7 on the top -- that day, are you referencing a</p> <p>8 hearing?</p> <p>9 A Yes.</p> <p>10 Q What was that --</p> <p>11 A A hearing for determination on bond.</p> <p>12 Q And what would that hearing look like?</p> <p>13 A It's very case by case. You make me</p> <p>14 uncomfortable.</p> <p>15 But generally, it would be an opportunity</p> <p>16 for the defense to share everything they think I</p> <p>17 should know about their client before I set bond.</p> <p>18 And usual -- I don't want to say usually. Many</p> <p>19 times the attorney would give me that information as</p> <p>20 an officer of the court.</p> <p>21 I did not believe that the bond</p> <p>22 hearings -- I don't -- I did not believe that the</p> <p>23 rules of evidence apply to bond hearings. And I did</p> <p>24 not require them to call witnesses. Many times I</p> <p>25 would let them tell me what the mother would say or</p>	<p style="text-align: right;">Page 24</p> <p>1 A Yes, ma'am.</p> <p>2 Q -- was it --</p> <p>3 A I'm sorry. I answered before. I'm</p> <p>4 sorry.</p> <p>5 Yes.</p> <p>6 Q No. No, no, no. It's entirely fair.</p> <p>7 I -- it goes faster if you read my mind. It's only</p> <p>8 for the court reporter that we're having to slow it</p> <p>9 down.</p> <p>10 So there generally was a court reporter</p> <p>11 in your -- in your courtroom; is that fair?</p> <p>12 A Yes, ma'am.</p> <p>13 Q Okay. And so what times would the court</p> <p>14 reporter not transcribe what was happening on the</p> <p>15 record?</p> <p>16 A She would transcribe records when I told</p> <p>17 her we were going to make a record.</p> <p>18 Q Okay.</p> <p>19 A I would make -- I would tell her we're</p> <p>20 going to make a record when any party requested it.</p> <p>21 Q Okay. That makes sense.</p> <p>22 So you've -- you've heard -- and we're</p> <p>23 in -- I understand in a hypothetical world, when you</p> <p>24 were on your felony docket, you hear the bond</p> <p>25 modification motion. You allow defense to present</p>
<p style="text-align: right;">Page 23</p> <p>1 what their witnesses would say if allowed to call,</p> <p>2 because it was easier for them not to try to track</p> <p>3 those witnesses down. And other times, they would</p> <p>4 call those witnesses themselves.</p> <p>5 So either it would be by statement of the</p> <p>6 attorney and/or statement of the attorney and</p> <p>7 additional witnesses. That is primarily, you know,</p> <p>8 it.</p> <p>9 Q Would there be a court reporter</p> <p>10 transcribing those hearings?</p> <p>11 A Oh, sometimes. It -- it was available,</p> <p>12 if they wanted it and -- and --</p> <p>13 Q Do you --</p> <p>14 A Sometimes they did -- some -- they -- I'm</p> <p>15 sorry.</p> <p>16 Sometimes defense counsel wanted it.</p> <p>17 Many times they did not. So it was -- there was a</p> <p>18 court reporter available and utilized in some</p> <p>19 sessions.</p> <p>20 Q Let me ask a broader question. When you</p> <p>21 ran your general docket, I'm sure there were</p> <p>22 numerous types of motions and preliminary matters</p> <p>23 and up to and including trial that you heard.</p> <p>24 Did you generally have a court reporter</p> <p>25 in your courtroom or --</p>	<p style="text-align: right;">Page 25</p> <p>1 argument.</p> <p>2 I presume you allow the prosecutor to</p> <p>3 respond to that argument?</p> <p>4 A Yes, ma'am.</p> <p>5 Q And then would -- how would you make your</p> <p>6 findings?</p> <p>7 A May I go back to an answer I've already</p> <p>8 given before I answer this one or would you rather</p> <p>9 me --</p> <p>10 Q Please --</p> <p>11 A -- answer your question?</p> <p>12 Q No. Please. And then I'll come back to</p> <p>13 this.</p> <p>14 A This discussion has jogged my memory when</p> <p>15 you said, What is the process when a request for a</p> <p>16 bond hearing or modification was made at the</p> <p>17 district court level?</p> <p>18 Sometimes if there had been a contested</p> <p>19 preliminary hearing, I would take the bond request</p> <p>20 under advisement or have them file a motion, and I</p> <p>21 would have that hearing the same day that I would</p> <p>22 rule on the sufficiency of the evidence at the</p> <p>23 preliminary hearing so that I could read the</p> <p>24 testimony of the transcript.</p> <p>25 I found that to be very helpful</p>

<p style="text-align: right;">Page 26</p> <p>1 Allegations may look and appear one way, and then</p> <p>2 when you see the contest -- when you see the</p> <p>3 testimony and how the evidence comes out at</p> <p>4 preliminary hearing, it gives a much better view of</p> <p>5 the incident than maybe cold allegations on an</p> <p>6 information.</p> <p>7 So I -- I really didn't think about that</p> <p>8 earlier when you asked the process for bond request</p> <p>9 in front of me as a district judge. Many times I</p> <p>10 would consider the transcript of the preliminary</p> <p>11 hearing if that was available.</p> <p>12 Q That -- no. Thank you for correcting</p> <p>13 that.</p> <p>14 So just so I'm clear: You found it</p> <p>15 helpful to look at that transcript and the evidence</p> <p>16 presented at the preliminary hearing in order to</p> <p>17 make your determination of whether bond should be</p> <p>18 adjusted or not?</p> <p>19 A Sometimes I did, yes.</p> <p>20 Q Okay. All right. So going back to my</p> <p>21 question that was pending before we -- and I</p> <p>22 appreciate that revision -- I asked after the</p> <p>23 defense had made argument, I presumed you allowed</p> <p>24 the prosecutor to respond?</p> <p>25 A Yes, ma'am.</p>	<p style="text-align: right;">Page 28</p> <p>1 that captured what I had just done, and I had the</p> <p>2 attorneys agree that that was an accurate minute.</p> <p>3 Q So would that minute include the oral</p> <p>4 findings that you had provided from the bench?</p> <p>5 A Yes. Well --</p> <p>6 Q A summary of the oral findings that you</p> <p>7 had provided from the bench?</p> <p>8 A Sometimes. And if there was a record, it</p> <p>9 most likely would not. If it was a record, the</p> <p>10 minute is not going to say as much because there's a</p> <p>11 transcript.</p> <p>12 Q If there's not a transcript, would the</p> <p>13 minute be a summary of your findings that you had</p> <p>14 announced from the bench?</p> <p>15 A I wouldn't feel comfortable saying that.</p> <p>16 Every case is different. Sometimes the minutes were</p> <p>17 more detailed with complicated cases.</p> <p>18 But on a routine docket, if you've got 75</p> <p>19 on the docket that day, the minute is just -- it's</p> <p>20 just a minute. It's -- it's a -- it's a minute as</p> <p>21 to what happened that day.</p> <p>22 Q Would it include -- if you had decided to</p> <p>23 not reduce bond, would it have included your reasons</p> <p>24 for not reducing bond or any reason for not reducing</p> <p>25 bond?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q And I think you said, "Yes."</p> <p>2 And then I asked: How would you then</p> <p>3 make your findings?</p> <p>4 MS. MOORE: And -- and just to be</p> <p>5 clear, we're not asking him his mental?</p> <p>6 We're asking him the physical, what he</p> <p>7 did in the courtroom thing?</p> <p>8 MS. RYAN: That's right.</p> <p>9 MS. MOORE: Okay.</p> <p>10 MS. RYAN: I may get to mental</p> <p>11 questions, but only on an aggregate</p> <p>12 basis, not to any particular case.</p> <p>13 BY MS. RYAN:</p> <p>14 Q But that -- the question pending before</p> <p>15 the judge right now is how -- physically, what was</p> <p>16 the process by which you made your findings?</p> <p>17 A I would state my opinion on the record</p> <p>18 that I would --</p> <p>19 Q So when you -- I'm sorry. I --</p> <p>20 A I'm sorry.</p> <p>21 If -- if it was on the record, then there</p> <p>22 would be a transcript of my ruling and explanation,</p> <p>23 along with the order. If it was not on the record,</p> <p>24 I would make a minute. As I gave my ruling, I would</p> <p>25 then dictate the minute to my clerk that I wanted</p>	<p style="text-align: right;">Page 29</p> <p>1 A Hit or miss. Some -- sometimes they</p> <p>2 would, and sometimes they probably did not.</p> <p>3 Q So if I went back to your, like, dockets</p> <p>4 from that time and looked at your bond reduction</p> <p>5 minute entries that did not have a transcript, do</p> <p>6 you think it's more likely than not that there would</p> <p>7 be some basis for what your ruling had been</p> <p>8 announced orally in court?</p> <p>9 A Yes, I think there would be some basis.</p> <p>10 Q That was helpful. Thank you.</p> <p>11 And so when you were making your ruling</p> <p>12 on those bond modification motions, what factors</p> <p>13 were you considering?</p> <p>14 A Oh, first and foremost, their likelihood</p> <p>15 to return to court. I looked to family support in</p> <p>16 the community. I looked at jobs. I looked at other</p> <p>17 cases they've had and if they show up. Contact with</p> <p>18 counsel. Sometimes they -- they have good contact</p> <p>19 with counsel.</p> <p>20 Really, any factor that was presented to</p> <p>21 me that would show they're going to come back to</p> <p>22 court, make their best effort to come back.</p> <p>23 Q A moment ago you said that it's a fluid</p> <p>24 dynamic around bond. I just wonder if you could</p> <p>25 explain what you meant by that?</p>

Exhibit 7

Page 32

1 docket.
2 Did you presume they were unable to pay
3 whatever bond had been set previously if they were
4 appearing before you on a reduction motion?

5 A I never put a presumption in the record.
6 I don't -- I don't think I ever made that finding.
7 I tried to start over. That's a tough question.

8 I -- I -- I didn't make a finding that I
9 was presuming they were unable to pay it, but
10 obviously that bond amount or the conditions that
11 had been set were not securing their release. So I
12 tried to listen to their situation, the allegations
13 of the crime, their family support, and then
14 determine what conditions or -- what condition or
15 multiple conditions could be put in place to secure
16 their release that they were going to back to court

17 I -- I feel like I'm avoiding your
18 question. I -- I don't mean to. That's tougher
19 than it -- than it sounds. I -- did you want ask --

20 Q I also think you're avoiding my question,
21 and I also think you don't mean to. So I'm going to
22 ask -- I do think you kind of walked through your
23 thought process there a little bit. So I'm going to
24 unpack it if that's okay.

25 If they are before you on a bond

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1 reduction motion, and they are still detained, is it
2 a fair presumption, whether you made it in the
3 record at the time or not, that they are unable to
4 pay the bond as -- or meet the conditions at set at
5 the time of that modification motion?

6 A No, ma'am, it's -- it's not fair to say
7 that.

8 Q Okay. And why is it not fair to say they
9 are unable to pay the amount if they remained
10 detained?

11 A These are not blanket statements. And
12 I -- I think I made very clear that this is a volume
13 docket, and every case is different and so is every
14 offender. And these are anecdotal experiences.

15 Many times it would be the case, and the
16 attorney would tell me -- many times the public
17 defender would make this part of the pitch -- that
18 they could make this bond, but they think there
19 should be a lower bond because the family wants to
20 pay a lower bond so there's more money to give them
21 towards a private lawyer. And so they had remained
22 in custody because the family is trying to hold on
23 to the money to see if they could get a lower bond
24 to apply more money to private counsel.

That was some thing I don't want

<p style="text-align: right;">Page 34</p> <p>1 to mislead you and say that that happened every</p> <p>2 time, but that was something that is ever present in</p> <p>3 these dockets, where the family has a finite amount</p> <p>4 of resources, and they want and trust a lawyer, and</p> <p>5 they had -- this finite amount of resources could be</p> <p>6 impacted substantially by the bond.</p> <p>7 So they are able to make the bond, but</p> <p>8 they are preferring to have a lower bond so that</p> <p>9 they could choose counsel of choice.</p> <p>10 Q So how would that factor into your</p> <p>11 decision-making of the larger factors of whether to</p> <p>12 reduce bond or not?</p> <p>13 A I'm going to answer. This is a</p> <p>14 deliberative process, but that is a big factor to</p> <p>15 me. That is a positive factor for the offender,</p> <p>16 that they have family support and they have a</p> <p>17 willingness to hire counsel of choosing. Those are</p> <p>18 positive factors for their return to court, in my</p> <p>19 estimation.</p> <p>20 Q Okay. We may come back to this later,</p> <p>21 but I think that's helpful. And just as a</p> <p>22 consideration in time, I'm going to move forward,</p> <p>23 but like I said, we may come back to this later.</p> <p>24 Okay. Let's talk a little bit about the</p> <p>25 bail schedule.</p>	<p style="text-align: right;">Page 36</p> <p>1 A Yes. And helpful.</p> <p>2 Q Okay. Perfect.</p> <p>3 All right. I am going to enter a couple</p> <p>4 of documents which you will have seen recently into</p> <p>5 evidence here, just so we can use them as we talk</p> <p>6 about this.</p> <p>7 MS. RYAN: So, first, I am going to</p> <p>8 mark -- you should have it in your</p> <p>9 documents. It was previously marked by</p> <p>10 my team as Document ZZZZZ [sic].</p> <p>11 THE WITNESS: I'm sorry. Are you</p> <p>12 asking me to grab my accordion now to</p> <p>13 look at them? I was told not to look at</p> <p>14 anything.</p> <p>15 MS. RYAN: Yes. Now I'm asking you</p> <p>16 to --</p> <p>17 THE WITNESS: Can you give me --</p> <p>18 MS. RYAN: And I appreciate that.</p> <p>19 Now I'm asking you to pull out two</p> <p>20 documents, one that was labeled ZZZZZ</p> <p>21 [sic] and one that was --</p> <p>22 THE WITNESS: I'm sorry. I'm sorry.</p> <p>23 MS. RYAN: -- labeled AA --</p> <p>24 THE WITNESS: I'm sorry. Ma'am --</p> <p>25 MS. RYAN: Let me tell you what they</p>
<p style="text-align: right;">Page 35</p> <p>1 A Okay.</p> <p>2 Q When I say "bail schedule," what does</p> <p>3 that mean to you?</p> <p>4 I going to make sure we're using the same</p> <p>5 language.</p> <p>6 A I might get my statutes wrong. I don't</p> <p>7 have anything in front of me. But we have -- I</p> <p>8 think bail schedule is the preset bails -- bail</p> <p>9 schedule. I think the statutory authorization is</p> <p>10 something like 1105.</p> <p>11 But we're thinking about -- I am thinking</p> <p>12 you're talking about the preset bonds that people</p> <p>13 that are arrested without a warrant, if they have</p> <p>14 the means to do so, may immediately post them for</p> <p>15 their release.</p> <p>16 Q And so I -- that is also what I am</p> <p>17 referring to when we refer to bail schedules.</p> <p>18 So throughout the course of today, when I</p> <p>19 use the word "bail" schedule or "bond" schedule, I'm</p> <p>20 going to be referring to exactly what you were just</p> <p>21 talking about, which is the preset bonds that mean</p> <p>22 that when you're arrested, you can pay and be</p> <p>23 released immediately.</p> <p>24 Is that -- or is it fair that we both use</p> <p>25 that word to describe that concept?</p>	<p style="text-align: right;">Page 37</p> <p>1 are. Let me tell you what they are.</p> <p>2 THE WITNESS: One at a time. IC or</p> <p>3 V, I can't hear the difference.</p> <p>4 MS. RYAN: Yes. I am asking you to</p> <p>5 pull out your two declarations in this</p> <p>6 case. One of them should be labeled</p> <p>7 ZZZZZ [sic], it has a tab that's --</p> <p>8 THE WITNESS: Z as in zebra?</p> <p>9 MS. RYAN: Yes, five [sic] Zs,</p> <p>10 Exhibit 1. Yes.</p> <p>11 And then I'm -- and just for</p> <p>12 efficiency, I'm going to ask you to also</p> <p>13 pull out the five As. That's AAAAA.</p> <p>14 So for the --</p> <p>15 THE WITNESS: Yes, ma'am.</p> <p>16 MS. RYAN: For the document that was</p> <p>17 previously marked ZZZZZ. I'm going to</p> <p>18 ask the court reporter to mark that as</p> <p>19 Exhibit 1 for purposes of this</p> <p>20 deposition.</p> <p>21 I'm going to ask my colleague, Gary,</p> <p>22 to put that on the screen.</p> <p>23 (Whereupon, Plaintiff's Exhibit</p> <p>24 Musseman No. 1, Affidavit of William</p> <p>25 Musseman, dated 5/15/2017, was</p>

<p style="text-align: right;">Page 38</p> <p>1 marked for identification.)</p> <p>2 MS. RYAN: And then the document</p> <p>3 previously marked Exhibit AAAAA, I'm</p> <p>4 going to ask to have marked as Exhibit 2</p> <p>5 for purposes of this deposition.</p> <p>6 (Whereupon, Plaintiff's Exhibit</p> <p>7 Musseman No. 2, Declaration of</p> <p>8 William Musseman, was marked for</p> <p>9 identification.)</p> <p>10 BY MS. RYAN:</p> <p>11 Q While my colleague is getting that up on</p> <p>12 the screen and you have them in front of you, let's</p> <p>13 take a look at the one that's now Exhibit 1, which</p> <p>14 is your affidavit from April the 15th, 2019.</p> <p>15 Do you have that document in front of</p> <p>16 you?</p> <p>17 A I think so. I don't see a date to</p> <p>18 confirm.</p> <p>19 Q I think there may be a date on the top of</p> <p>20 the document, the -- the document -- the filing</p> <p>21 stamp from the federal court that said -- that says</p> <p>22 April 15, 2019 in the top right corner.</p> <p>23 A Yes, ma'am. Yes.</p> <p>24 Q Perfect.</p> <p>25 Do you recognize this document?</p>	<p style="text-align: right;">Page 40</p> <p>1 second to read that.</p> <p>2 A If you will. Thank you.</p> <p>3 Q No problem.</p> <p>4 A Okay.</p> <p>5 Q Great.</p> <p>6 A I read it.</p> <p>7 Q So taking a step back, do you know when</p> <p>8 Tulsa County began using a bail schedule?</p> <p>9 A No, ma'am.</p> <p>10 Q Would it sound right if you -- if I said</p> <p>11 that you started -- the Tulsa County started using a</p> <p>12 bail schedule in 2001 in response to the statutes we</p> <p>13 were speaking about a moment ago?</p> <p>14 MR. WILSON: Object to the form of</p> <p>15 the question.</p> <p>16 BY MS. RYAN:</p> <p>17 Q You can answer.</p> <p>18 A Things that are ten years old seem like</p> <p>19 two years ago to me now. 2001 does not mean</p> <p>20 anything, but I would have no reason to dispute that</p> <p>21 accuracy.</p> <p>22 Probably if I had to give my best guess,</p> <p>23 I would say around 2004, but -- so that 2001 I think</p> <p>24 is a fair -- it's fair.</p> <p>25 Q Do you have any knowledge, either</p>
<p style="text-align: right;">Page 39</p> <p>1 A Yeah, I think so. I think I signed this</p> <p>2 earlier, yeah.</p> <p>3 Q Is it --</p> <p>4 A I recognize what it is.</p> <p>5 Q It's -- it's an affidavit that you</p> <p>6 submitted in conjunction with this litigation --</p> <p>7 A Yes.</p> <p>8 Q -- is that right?</p> <p>9 Great.</p> <p>10 A Yes.</p> <p>11 Q On the second page, is that your</p> <p>12 signature?</p> <p>13 A It is.</p> <p>14 Q Great.</p> <p>15 And so you were declaring the information</p> <p>16 in this -- in this document for purposes of proof in</p> <p>17 this litigation; is that correct?</p> <p>18 A For the purposes of what in this</p> <p>19 litigation?</p> <p>20 Q Submitting proof in this litigation,</p> <p>21 providing the court with proof, evidence in this</p> <p>22 litigation.</p> <p>23 A My intent was to sign this as evidence.</p> <p>24 Q Okay. All right. So let's take a look</p> <p>25 at paragraph 3 of this document. I'll give you a</p>	<p style="text-align: right;">Page 41</p> <p>1 personally or as a part of your official capacity as</p> <p>2 a special judge, district court judge or the</p> <p>3 presiding judge, how the original bail schedule that</p> <p>4 was used in Tulsa County was set?</p> <p>5 A No, ma'am.</p> <p>6 Q Okay. Do you have knowledge as to how</p> <p>7 the bail schedule is revised?</p> <p>8 A Yes, ma'am.</p> <p>9 Q And can you share that with me?</p> <p>10 A There is a meeting of the presiding</p> <p>11 judge, the district attorney, and the public</p> <p>12 defender, and the bond schedules are adjusted,</p> <p>13 revised, modified, whatever term you want to use, by</p> <p>14 that group.</p> <p>15 Q Are they -- are there any other community</p> <p>16 stakeholders included in that meeting besides -- I'm</p> <p>17 going to count the district attorney and the public</p> <p>18 defender as community stakeholders, but any other</p> <p>19 community stakeholders?</p> <p>20 A I'm only testifying now to the ones that</p> <p>21 I've experienced. How others have done it in the</p> <p>22 past, no.</p> <p>23 And it -- I feel like the -- the reason</p> <p>24 that I say those three people is I -- I believe that</p> <p>25 the authority --</p>

<p style="text-align: right;">Page 42</p> <p>1 think, our Criminal Rule 1, that was the procedure</p> <p>2 by which it was outlined.</p> <p>3 Q And I -- I meant to say this when we</p> <p>4 started today: I am going to be asking you several</p> <p>5 questions where obviously your role as presiding</p> <p>6 judge would have allowed you to have knowledge of.</p> <p>7 So for instance, we're talking about the bond</p> <p>8 schedule and your work with that as presiding judge.</p> <p>9 If I phrase a question that makes -- as I</p> <p>10 just did, that makes clear that perhaps you're</p> <p>11 not -- you're not still presiding judge, and so you</p> <p>12 may not have current knowledge, just let me know.</p> <p>13 That's fine.</p> <p>14 A Okay.</p> <p>15 Q All right. So on the bond schedule, what</p> <p>16 factors are considered in setting and determining</p> <p>17 those amounts, the amount on the schedule?</p> <p>18 A The bonds had been set -- there are --</p> <p>19 let's except out for this discussion: There are</p> <p>20 some bonds actually set by statute. But the bonds</p> <p>21 that are to be set on the bond schedule were already</p> <p>22 set before I was ever a judge.</p> <p>23 So the modification -- I mean, I guess I</p> <p>24 could just give you examples of things we have done.</p> <p>25 When -- I think it was Judge Nightingale was the</p>	<p style="text-align: right;">Page 44</p> <p>1 A That's okay.</p> <p>2 Q You shared several different factors with</p> <p>3 me, including some bonds being set by state statute,</p> <p>4 some bonds in response to --</p> <p>5 A I didn't really consider that a factor.</p> <p>6 I was trying to except out that there are some of</p> <p>7 those.</p> <p>8 Q I'm just trying to be as comprehensive as</p> <p>9 possible for why the amounts are what they are on</p> <p>10 the schedules.</p> <p>11 So one of the reasons the amounts are</p> <p>12 what they are on the schedule is because state</p> <p>13 statute requires it.</p> <p>14 Another reason that the amounts are what</p> <p>15 they are on the schedule is there are times when the</p> <p>16 offense is changed from a felony to a misdemeanor,</p> <p>17 like the drug possession statute that you gave to</p> <p>18 us, and that might reflect a change in the bond</p> <p>19 schedule; correct?</p> <p>20 A Yes, ma'am.</p> <p>21 Q You also mentioned that you look at</p> <p>22 the -- the schedule amount in other counties?</p> <p>23 A Yes, ma'am.</p> <p>24 Q And that you look at the violence of the</p> <p>25 charge, the type of charge, and the offense charged</p>
<p style="text-align: right;">Page 43</p> <p>1 presiding, bonds were reduced because there had been</p> <p>2 a state question that was passed by the voters that</p> <p>3 changed our drug possession to misdemeanor. So any</p> <p>4 drug in Oklahoma, marijuana or heroin, what --</p> <p>5 whatever it might be, possession of drugs is a</p> <p>6 misdemeanor.</p> <p>7 So to reflect that change by state</p> <p>8 question, we adjusted -- we, the court, the</p> <p>9 presiding judge, in consultation with the DA and the</p> <p>10 public defenders I described before, reduced all of</p> <p>11 those possession of controlled drug bonds to a</p> <p>12 thousand dollars to reflect the misdemeanor that</p> <p>13 they are now, not a felony.</p> <p>14 We consider other similar counties. If</p> <p>15 Tulsa County has a bond for a charge that is really</p> <p>16 out of whack or much higher than Oklahoma County, we</p> <p>17 consider that and try to maintain some type of</p> <p>18 consistency with counties similar to us.</p> <p>19 We consider the violence, the charge, the</p> <p>20 type of charge, the offense charged. I think that's</p> <p>21 a fair statement of what's considered.</p> <p>22 Q So you shared several different factors</p> <p>23 with me --</p> <p>24 A I can't -- I'm sorry.</p> <p>25 Q Yeah. Sorry. You --</p>	<p style="text-align: right;">Page 45</p> <p>1 as the factors to what the amount should be on the</p> <p>2 bond schedule?</p> <p>3 A Yes, ma'am.</p> <p>4 Q Do you consider, as a part of the bond</p> <p>5 schedule, risk of flight or return to court?</p> <p>6 A Yes.</p> <p>7 Q What would an example of how return to</p> <p>8 court would be reflected in the amount for a</p> <p>9 particular offense in the bond schedule?</p> <p>10 A I -- I don't understand your question.</p> <p>11 Q So I just asked whether chancing of --</p> <p>12 the chance of returning to court was a factor in the</p> <p>13 amount set on the bond schedule for any given</p> <p>14 offense, and you said that it was.</p> <p>15 So my question is: Can you give me an</p> <p>16 example of an offense where the bond schedule</p> <p>17 reflects whether someone is going to return to court</p> <p>18 or not?</p> <p>19 A Where the bond schedule reflects whether</p> <p>20 they're going to return to court or not?</p> <p>21 Q Yes.</p> <p>22 A I don't -- I can't answer. I don't know</p> <p>23 what you're asking.</p> <p>24 Q Okay. A moment ago we walked through the</p> <p>25 factors of what the amount on the bond schedule</p>

<p style="text-align: right;">Page 46</p> <p>1 are.</p> <p>2 A Yes.</p> <p>3 Q After we walked through those factors, I</p> <p>4 asked you if returning to court was a factor that</p> <p>5 contributed to the amount of any charge on the bond</p> <p>6 schedule. And you said, "Yes."</p> <p>7 So I'm asking for an example of how</p> <p>8 returning to court impacts a given charge on the</p> <p>9 bond schedule.</p> <p>10 A I'm having to guess at what you're</p> <p>11 asking. I understand what --</p> <p>12 Q I -- I don't want -- I don't want you to</p> <p>13 guess. Let -- let me try it again.</p> <p>14 We walked through several factors that</p> <p>15 you say play into the amount on the schedule for</p> <p>16 the --</p> <p>17 A Yes.</p> <p>18 Q Let me start again.</p> <p>19 Does whether someone -- does whether</p> <p>20 someone will return to court affect the amount on</p> <p>21 the bond schedule for any given offense?</p> <p>22 A I believe it does.</p> <p>23 Q How?</p> <p>24 A For example, eluding.</p> <p>25 Q Can you give me another example where</p>	<p style="text-align: right;">Page 48</p> <p>1 Q -- schedule, for a warrantless arrest?</p> <p>2 A Yes, ma'am, there are.</p> <p>3 Q What are those -- and what are those</p> <p>4 individualized determinations?</p> <p>5 A Domestic assault and battery. I -- and I</p> <p>6 think there's some others, but unless it's put in my</p> <p>7 face, I'm not going to know it.</p> <p>8 The judges that deal with that would</p> <p>9 probably know better. I'm sorry.</p> <p>10 I know domestic assault and battery is</p> <p>11 one of those. And if I recall right, I thought the</p> <p>12 statute, the -- the pretrial bond Statute 1105 at</p> <p>13 some point tells us which ones can't be set by bail</p> <p>14 schedule.</p> <p>15 Q So for the ones that on the schedule, for</p> <p>16 the -- for any offense on the schedule, is there any</p> <p>17 individualized determination of the amount of bond</p> <p>18 at the time of arrest?</p> <p>19 A When you say individualized</p> <p>20 consideration, tell me what you mean.</p> <p>21 Q Do people receive any bond amount</p> <p>22 separate from what is on the bond schedule for</p> <p>23 offenses that are listed on the bond schedule?</p> <p>24 A Yes. Many times, but not --</p> <p>25 Q So --</p>
<p style="text-align: right;">Page 47</p> <p>1 return to court is impacted in the bond schedule --</p> <p>2 or the bond schedule is returned -- is impacted by</p> <p>3 the factor of returning to court?</p> <p>4 A Oh, boy. Not off the top of my head</p> <p>5 right now.</p> <p>6 Q Okay. I'm just -- let's move on.</p> <p>7 All right. So I'm going to talk about</p> <p>8 the use of the bond schedule for warrantless arrest.</p> <p>9 How are the bond amounts determined for</p> <p>10 someone who is arrested on a warrantless arrest?</p> <p>11 A Bond schedule?</p> <p>12 Q Yes.</p> <p>13 A You said, Let's use the bond schedule?</p> <p>14 Q Well, I guess it's a question I'm asking.</p> <p>15 So for someone on a warrantless arrest,</p> <p>16 how is the bond amount determined?</p> <p>17 A By that process I answered earlier. It's</p> <p>18 the preset bond schedule. The present bond schedule</p> <p>19 is the product of the presiding judge, the DA, and</p> <p>20 the public defender.</p> <p>21 Q Great. I wanted to make sure that we</p> <p>22 were on the same page.</p> <p>23 Are there any individualized</p> <p>24 determinations, beyond the bond --</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 A -- not at booking. I --</p> <p>2 Q Okay.</p> <p>3 A You're saying "process." Well, the</p> <p>4 process is you're booked, and you get the bond</p> <p>5 schedule amount. And if you have the means to make</p> <p>6 that bond schedule amount, your release will be</p> <p>7 immediate. The others will be in front of a judge</p> <p>8 for an individualized determination within 48 hours.</p> <p>9 And, yes, those bond amounts are</p> <p>10 individualized and many times different than the</p> <p>11 bond -- this preset bond amount, is the process.</p> <p>12 Q Yup. So we'll get to the docket hearing</p> <p>13 and -- or the bond docket in a few minutes. I'm</p> <p>14 focused on the time of arrest and booking.</p> <p>15 Are there any individualized</p> <p>16 determinations of the bond schedule made when</p> <p>17 someone is arrested and booked, or is it only what's</p> <p>18 on the bond schedule?</p> <p>19 A It would be an anomaly if there was an</p> <p>20 exception, but I can see exceptions. I could see an</p> <p>21 arrest and a call to the judge. I -- I could see</p> <p>22 something like that happening.</p> <p>23 But, no, I -- I think the practice is, is</p> <p>24 that they will get the bond amount that is on the</p> <p>25 preset schedule.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q You're not aware of any deviation for the</p> <p>2 bond schedule -- from the bond schedule at the time</p> <p>3 of arrest and booking?</p> <p>4 A I am not personally, no.</p> <p>5 Q All right. Are there any offenses on the</p> <p>6 bond schedule where personal recognizance is the</p> <p>7 default on the schedule?</p> <p>8 A I don't know.</p> <p>9 Q When you were presiding judge over the</p> <p>10 bond schedule and revising the bond schedule at that</p> <p>11 time, were there any offenses where personal --</p> <p>12 being released on personal recognizance was the</p> <p>13 default?</p> <p>14 A I don't think so.</p> <p>15 Q And why is that the case?</p> <p>16 A That has been a topic of discussion. And</p> <p>17 one of the things that -- we've looked to other</p> <p>18 states that have done that. California is a good</p> <p>19 example. And those states have enabling statutes</p> <p>20 that allow for it.</p> <p>21 We could not find that in Oklahoma. We</p> <p>22 found the pretrial release in Section 11 -- or I</p> <p>23 think it was Section 1105, if I -- if I recall</p> <p>24 correctly. And that at least allows for the</p> <p>25 presiding judge by standing order to characterize a</p>	<p style="text-align: right;">Page 52</p> <p>1 I'm solely focused on the bond schedule.</p> <p>2 And I asked, when you were presiding</p> <p>3 judge, were there any offenses for which the default</p> <p>4 amount on the bond schedule was personal</p> <p>5 recognizance.</p> <p>6 And you said, No.</p> <p>7 And I asked --</p> <p>8 A I don't think so.</p> <p>9 Q And I asked why.</p> <p>10 And you said there had been some</p> <p>11 discussions, and then you pointed to the Oklahoma</p> <p>12 Statute 1105 as to what authority the presiding</p> <p>13 judge has over what I presume to be bond schedule</p> <p>14 amounts.</p> <p>15 So does that help center you with what</p> <p>16 we're talking about in --</p> <p>17 A It -- it does. 1105 was not really about</p> <p>18 bond schedule amounts. That was the authority to</p> <p>19 set or have cases reviewed for pretrial release.</p> <p>20 Q Okay.</p> <p>21 A And I was inartful in the way I told you</p> <p>22 about it 'cause I was trying to do it by way of</p> <p>23 illustration.</p> <p>24 Q Okay.</p> <p>25 A At least that statute gave a roadmap and</p>
<p style="text-align: right;">Page 51</p> <p>1 classification of charges to be considered for</p> <p>2 pretrial, which is the closest I could find as a way</p> <p>3 to get to PR, because we're looking at conditions</p> <p>4 other than monetary release.</p> <p>5 But the statute also explains that it's</p> <p>6 just an evaluation and recommendation from pretrial</p> <p>7 that has to be approved by the judge.</p> <p>8 Q So would the presiding judge have the</p> <p>9 authority to make that classification as an</p> <p>10 evaluation, as you just mentioned, for a category of</p> <p>11 offenses on the bond docket -- I mean, on the</p> <p>12 bond --</p> <p>13 A Ma'am --</p> <p>14 Q -- schedule?</p> <p>15 Excuse me.</p> <p>16 A Ma'am -- ma'am, I believe -- oh, on the</p> <p>17 bond schedule? I'm talking about pretrial release.</p> <p>18 So you've kind of -- okay.</p> <p>19 Q So we're --</p> <p>20 A Time out. I'm sorry. Will you ask that</p> <p>21 again?</p> <p>22 Q I'm solely focused on the bond schedule.</p> <p>23 We're going to get --</p> <p>24 A Okay.</p> <p>25 Q -- to the bond docket in a few minutes.</p>	<p style="text-align: right;">Page 53</p> <p>1 explained who had the authority. The presiding</p> <p>2 judge, not an individual judge, but the presiding</p> <p>3 judge had the authority, at least by standing order,</p> <p>4 to create a -- a class of cases that could</p> <p>5 immediately be reviewed by pretrial services to</p> <p>6 consider for release on pretrial. If they made that</p> <p>7 recommendation for release, then they could show it</p> <p>8 to the individual judge for authorization.</p> <p>9 I got off track on the bond schedule, but</p> <p>10 I was using it by way of example. You asked the</p> <p>11 question why was there no standing PRs?</p> <p>12 There's no enabling statute to that</p> <p>13 effect, that I could find, that allowed for the</p> <p>14 standing order of PRs.</p> <p>15 Q So it's your -- is it fair to say that</p> <p>16 you do not believe that the presiding judge of Tulsa</p> <p>17 County has the authority to have standing PRs for</p> <p>18 certain categories of offenses on the bond schedule?</p> <p>19 A Yes, ma'am.</p> <p>20 Q And so --</p> <p>21 A Right or wrong, that's -- that's my</p> <p>22 belief, yes, ma'am.</p> <p>23 Q And what is that belief based on?</p> <p>24 A What I just explained.</p> <p>25 Q So your view that the statute is</p>

<p style="text-align: right;">Page 54</p> <p>1 that fair?</p> <p>2 A Yes, ma'am.</p> <p>3 Q And you mentioned that there had been</p> <p>4 discussions.</p> <p>5 Can you share who those discussions have</p> <p>6 been with?</p> <p>7 A Yes. The Public Defender's Office, the</p> <p>8 DA's office, and I think even Still She Rises was a</p> <p>9 part of that, and it came at a time -- it continued</p> <p>10 for some period of time, but it -- it was sparked,</p> <p>11 if you will, with the Vera.</p> <p>12 And I -- it's hard to tease out sometimes</p> <p>13 what was the product of Vera versus just setting of</p> <p>14 bonds, but Vera sparked a lot of these conversations</p> <p>15 that had. In my memory, it's contemporaneous in</p> <p>16 time to when Vera was in town. We were having</p> <p>17 conversations with public the defenders, the DAs,</p> <p>18 judges about: Is -- is there a way to have standing</p> <p>19 PRs?</p> <p>20 Q So that's --</p> <p>21 A Personal recognizance.</p> <p>22 Q There's some categories of offenses for</p> <p>23 which there is no associated jail time as a part of</p> <p>24 the recommended sentence for that offense; is that</p> <p>25 fair? Trespassing as an example?</p>	<p style="text-align: right;">Page 56</p> <p>1 I don't know. I've never contemplated</p> <p>2 that.</p> <p>3 Q So when you say "standing order," I'm</p> <p>4 assuming you mean administrative order; is that</p> <p>5 fair?</p> <p>6 A Well, I -- yes. I was thinking</p> <p>7 administrative order, yes, ma'am.</p> <p>8 Q And so your position is the presiding</p> <p>9 judge alone, perhaps through the administrative</p> <p>10 order, doesn't have that -- have that power.</p> <p>11 My question is: Do you have an opinion</p> <p>12 as to the authority of the entire court through a</p> <p>13 local rule as to the ability to change the bond</p> <p>14 schedule on those categories of offenses?</p> <p>15 A I don't have an opinion.</p> <p>16 Q Okay. Have you discussed the possibility</p> <p>17 of a local rule as to certain categories of offenses</p> <p>18 on the bond schedule being default PRs?</p> <p>19 A I don't recall that. If I ever did, I</p> <p>20 have no memory of that.</p> <p>21 Q All right. Just a couple more questions</p> <p>22 on the -- the bond schedule, and then we'll take a</p> <p>23 break.</p> <p>24 So a minute -- a moment ago you mentioned</p> <p>25 that anyone who pays the amount at the time of</p>
<p style="text-align: right;">Page 55</p> <p>1 A What -- what -- what did you say? Jay --</p> <p>2 Q Trespassing as -- trespassing as an</p> <p>3 example.</p> <p>4 A I don't dispute anything you're saying.</p> <p>5 I don't know.</p> <p>6 Q If there is a category of offenses for</p> <p>7 which the eventual sentence, should one have been</p> <p>8 convicted, is no jail time, is it your position that</p> <p>9 the presiding judge does not have the authority to</p> <p>10 book and release individuals on those types of</p> <p>11 charges, and instead those folks have to be detained</p> <p>12 even though the ultimate sentence would not be</p> <p>13 detention?</p> <p>14 A Yes, ma'am.</p> <p>15 Q So you don't think the presiding judge</p> <p>16 has the authority over those issues?</p> <p>17 A Not on a standing order, no, ma'am.</p> <p>18 Q So you --</p> <p>19 A But --</p> <p>20 Q You are mentioning on a standing order.</p> <p>21 Do you think that they have -- that the court itself</p> <p>22 could issue a local rule as to the bond schedule on</p> <p>23 those categories of offenses?</p> <p>24 A If I understand your question right, I --</p> <p>25 a local rule?</p>	<p style="text-align: right;">Page 57</p> <p>1 arrest and booking on the bond schedule, they're</p> <p>2 immediate release; is that right?</p> <p>3 A Yes.</p> <p>4 Q Can an individual post their own -- own</p> <p>5 bond amount that's listed on the schedule and be</p> <p>6 released, or do they have to work with a bail</p> <p>7 bondsman in order to post that amount?</p> <p>8 A They can post their own.</p> <p>9 Q And anyone who does not post that amount</p> <p>10 is detained until the bond docket hearing at a</p> <p>11 minimum; is that right?</p> <p>12 A That's how I understand the process, yes,</p> <p>13 ma'am.</p> <p>14 Q And so if an individual can't afford to</p> <p>15 pay the amount on the bond schedule, then they're</p> <p>16 detained until that hearing 24 to 48 hours later?</p> <p>17 A Yes, ma'am.</p> <p>18 Q And that applies to felony and</p> <p>19 misdemeanor charges?</p> <p>20 A Yes, ma'am.</p> <p>21 Q And so the key distinguishing factor</p> <p>22 between those who appear on bond docket and don't</p> <p>23 appear on bond docket, those who have paid and</p> <p>24 don't -- haven't paid; is that fair?</p> <p>25 A Those that have paid --</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q Have paid --</p> <p>2 A -- the distinguishing factor between</p> <p>3 those that have paid the preset bond and those that</p> <p>4 cannot?</p> <p>5 Q Yes.</p> <p>6 A Yes. That's an immediate factor --</p> <p>7 Q Okay.</p> <p>8 A -- yes.</p> <p>9 Q Great.</p> <p>10 MS. RYAN: So I'm going to -- we've</p> <p>11 been going about an hour. Do you want to</p> <p>12 take a -- a super-short break and then</p> <p>13 come back, and we'll talk about some of</p> <p>14 these administrative orders?</p> <p>15 THE WITNESS: I'll leave it up to</p> <p>16 you. I can go on. I know you're -- you</p> <p>17 feel pressed for time. I -- I don't need</p> <p>18 a break now, but it's up to you and</p> <p>19 everyone else. I'm ready.</p> <p>20 MS. RYAN: I could use a quick</p> <p>21 break. Okay. I'll try to take the next</p> <p>22 section a little longer than this</p> <p>23 section.</p> <p>24 THE VIDEOGRAPHER: The time is</p> <p>25 11:09 a.m. And we're going off the</p>	<p style="text-align: right;">Page 60</p> <p>1 A I don't know really the authority to</p> <p>2 issue AOs. I see AOs more as the vehicle or the</p> <p>3 method by which you conduct your responsibilities.</p> <p>4 Q As a part of those responsibilities, do</p> <p>5 you have oversight responsibilities over any of the</p> <p>6 district court judges or special judges?</p> <p>7 A Presiding judges have the -- yes. You</p> <p>8 say "oversight." It's described as -- I'm trying to</p> <p>9 think of the wording. I don't have it in front of</p> <p>10 me.</p> <p>11 Presiding judges have the authority --</p> <p>12 supervisory control is what they call it, but</p> <p>13 supervisory control is not to be mistaken with</p> <p>14 interfering with a judge's independent thinking and</p> <p>15 thought process. You don't supervise the decisions</p> <p>16 they make.</p> <p>17 Supervisory control by the statute refers</p> <p>18 more to making certain that the employees -- and</p> <p>19 they have a definition and tell you who is</p> <p>20 considered a judicial employee -- are maintaining</p> <p>21 the objectives of the judicial district and the</p> <p>22 Supreme Court.</p> <p>23 Q Would one of those objectives be</p> <p>24 consistency in the way various matters are handled,</p> <p>25 not necessarily the -- the decisions in those</p>
<p style="text-align: right;">Page 59</p> <p>1 record.</p> <p>2 (Whereupon, there was a recess taken</p> <p>3 from 11:09 a.m. to 11:21 a.m.)</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 11:21 a.m. And we're back on the record.</p> <p>6 BY MS. RYAN:</p> <p>7 Q Welcome back, Judge Musseman. I want to</p> <p>8 cover a couple of things -- go back to a couple of</p> <p>9 things we were talking about, and then we'll move</p> <p>10 forward to the adoption of the administrative orders</p> <p>11 that you mentioned earlier.</p> <p>12 So I realized we got so engaged in our</p> <p>13 conversation that I didn't ask you what your</p> <p>14 responsibilities were when you were presiding judge.</p> <p>15 A The -- the responsibilities are</p> <p>16 statutorily described, but generally speaking, the</p> <p>17 presiding judge has the authority and authorization</p> <p>18 to make judicial assignments and case assignments to</p> <p>19 all judicial employees and special judges in the</p> <p>20 judicial district.</p> <p>21 So assignment of workload, assignment of</p> <p>22 cases, assignment of dockets is generally the</p> <p>23 responsibility of the presiding judge.</p> <p>24 Q And then the authority to issue certain</p> <p>25 administrative orders as well; is that right?</p>	<p style="text-align: right;">Page 61</p> <p>1 matters, but the process by which those matters are</p> <p>2 handled?</p> <p>3 A Ms. Ryan, that is -- that is a good</p> <p>4 question. I'll tell you I could talk to you for two</p> <p>5 hours about that. There is --</p> <p>6 Q Well, I've only got two hours. So you</p> <p>7 can't talk to me for two hours about that.</p> <p>8 A There is an inherent and always present</p> <p>9 tension between consistency and individualized</p> <p>10 assessment.</p> <p>11 So, yes, I agree with your statement, but</p> <p>12 I caution you, personally, I believe it is artistic,</p> <p>13 not mechanical. You do want consistency.</p> <p>14 Consistency, I think, is a moral factor to consider</p> <p>15 in some of the decisions we make, but consistency</p> <p>16 just for the sake of consistency comes at the cost</p> <p>17 of individualized assessment.</p> <p>18 Q That makes sense.</p> <p>19 I -- I think you would agree, though,</p> <p>20 that there are certain state and federal</p> <p>21 constitutional -- setting aside this case and</p> <p>22 whether we agree on this case, there are certain</p> <p>23 state and federal constitutional procedural</p> <p>24 mechanisms which consistency is required; is that</p> <p>25 fair?</p>

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<p style="text-align: right;">Page 62</p> <p>1 A Yes. I'll say that's fair.</p> <p>2 Q Right.</p> <p>3 And so I guess my question is: As</p> <p>4 presiding judge, is one of your responsibilities</p> <p>5 attempting to -- understanding these are all</p> <p>6 individuals -- ensure as much consistency as</p> <p>7 possible?</p> <p>8 A Stated a way I'm more comfortable with,</p> <p>9 was to try to take steps under my supervisory</p> <p>10 control authority to make certain that they were</p> <p>11 meeting the objectives of the 14th Judicial District</p> <p>12 as dictated by the Supreme Court and statutes.</p> <p>13 Q And that would include potentially, like,</p> <p>14 training opportunities for the court; is that fair?</p> <p>15 A There is from time to time training, but</p> <p>16 that process is ad hoc, and it's on items as they</p> <p>17 pop up and are necessary.</p> <p>18 For example, you know, there are state</p> <p>19 questions that have been passed which kind of leads</p> <p>20 things to be different around here. So we might</p> <p>21 have pop-up sessions for training. And there are</p> <p>22 training on other areas, on telephonic search</p> <p>23 warrants to think of something in the immediate</p> <p>24 past.</p> <p>25 But, yes, it -- it is a -- it is a method</p>	<p style="text-align: right;">Page 64</p> <p>1 order.</p> <p>2 Is there other policy guidance,</p> <p>3 supervisory guidance that you issue as presiding</p> <p>4 judge outside of the rule-making process and</p> <p>5 administrative orders?</p> <p>6 A Would that include discussions with</p> <p>7 employees?</p> <p>8 Q I'm looking at something more -- again,</p> <p>9 going back to our consistency points, discussions</p> <p>10 would be ad hoc, is why I asked about training.</p> <p>11 I'm trying to understand how the</p> <p>12 consistency --</p> <p>13 A Ms. -- okay. I was going to say -- I'm</p> <p>14 sorry. I didn't mean to interrupt. Please finish.</p> <p>15 Q No, no, no, no.</p> <p>16 Just so were on the same page and have a</p> <p>17 clean record: I'm trying to nail down, when you</p> <p>18 were presiding judge, how did you communicate,</p> <p>19 through your supervisory authority, the objectives</p> <p>20 to the judges?</p> <p>21 And you mentioned -- we talked about</p> <p>22 training and how that was used sometimes, and that</p> <p>23 was more ad hoc. You mentioned the rule-making</p> <p>24 process. You mentioned administrative orders.</p> <p>25 I'm trying to determine if there's</p>
<p style="text-align: right;">Page 63</p> <p>1 that is used.</p> <p>2 Q What -- what other --</p> <p>3 A So --</p> <p>4 Q No, no, no. I apologize.</p> <p>5 What other steps would you take, under</p> <p>6 your supervisory control authority, to make certain</p> <p>7 that the judges were meeting the objective of the</p> <p>8 14th Judicial District?</p> <p>9 A The -- the rule-making process and the</p> <p>10 administrative orders. And then in a county our</p> <p>11 size -- please understand my county is different</p> <p>12 than -- you know, we have 77 counties in the State</p> <p>13 of Oklahoma. My judicial district is different than</p> <p>14 many.</p> <p>15 We have a judicial district that has at</p> <p>16 least a size, population that has many judges. So</p> <p>17 we have divisions, and each division, criminal,</p> <p>18 family, juvenile, these divisions -- civil, these</p> <p>19 divisions have their own administrative chiefs, and</p> <p>20 they certainly help filter down and communicate to</p> <p>21 different employees of the judicial district for the</p> <p>22 presiding judge and with the presiding judge.</p> <p>23 Q Very helpful.</p> <p>24 A couple of follow-ups on that. So you</p> <p>25 mentioned the rule-making process and administrative</p>	<p style="text-align: right;">Page 65</p> <p>1 anything else not ad hoc, not one off, that you used</p> <p>2 as a part of your supervisory authority to</p> <p>3 communicate the objectives?</p> <p>4 A Dialogue.</p> <p>5 Q Okay. Anything else?</p> <p>6 A Not that I can think of sitting here in</p> <p>7 this moment.</p> <p>8 Q Okay. And then you mentioned a minute</p> <p>9 ago that you also relied on your administrative</p> <p>10 chiefs for the various divisions to help communicate</p> <p>11 the objectives for the -- the various issues.</p> <p>12 Is that fair? I may be flubbing that a</p> <p>13 little. But is that fair?</p> <p>14 A No.</p> <p>15 That's fair, yes.</p> <p>16 Q Okay. And so when we think about the</p> <p>17 bond schedule, under what administrative chief would</p> <p>18 that fall?</p> <p>19 A Criminal.</p> <p>20 Q And is that also the same for the bond</p> <p>21 docket that we talked about a few minutes ago?</p> <p>22 A Yes, ma'am.</p> <p>23 Q And so during your time as presiding</p> <p>24 judge, who was the administrative chief of the</p> <p>25 criminal division?</p>

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<p style="text-align: right;">Page 66</p> <p>1 A Those are one-year terms, and the -- the</p> <p>2 presiding judge is a two-year term.</p> <p>3 I worked a lot with Judge Moody. So I</p> <p>4 think Judge Moody was one of them. And the other</p> <p>5 one -- maybe Judge Holmes.</p> <p>6 Q Okay.</p> <p>7 A If memory serves right. Please, this</p> <p>8 is -- my memory's fading.</p> <p>9 Q That's something I can -- yeah. That's</p> <p>10 something I can check.</p> <p>11 So, again, going back to the question I</p> <p>12 asked you a minute ago, are you aware of any policy</p> <p>13 guidance, rule-making, administrative orders that</p> <p>14 either Judge Moody or Judge Holmes issued regarding</p> <p>15 the bond docket during your time as presiding judge?</p> <p>16 MS. MOORE: Object to form.</p> <p>17 A No.</p> <p>18 BY MS. RYAN:</p> <p>19 Q What about -- about the bond schedule</p> <p>20 during your time as presiding judge?</p> <p>21 A No.</p> <p>22 Q Okay. All right. Also going back to one</p> <p>23 other thing on the bond schedule, and then we'll</p> <p>24 move forward to the bond docket.</p> <p>25 So you mentioned that 1105 is, you</p>	<p style="text-align: right;">Page 68</p> <p>1 question --</p> <p>2 Q Yeah.</p> <p>3 A -- completely.</p> <p>4 Q I think, for purposes of this discussion,</p> <p>5 let's set aside all categories of offenses in the</p> <p>6 bond schedule that you believe are outside of the</p> <p>7 presiding judge's authority. They have been set by</p> <p>8 someone else, either the legislature or the Supreme</p> <p>9 Court. So let's set those aside.</p> <p>10 A Yes, ma'am.</p> <p>11 Q So only those for which you believe you</p> <p>12 have authority.</p> <p>13 Am I right that that authority you</p> <p>14 believe is vested through 1105?</p> <p>15 A Yes.</p> <p>16 Q And are you aware --</p> <p>17 A The schedule -- I don't -- I don't have</p> <p>18 these in front of me. I --</p> <p>19 Q Yeah.</p> <p>20 A As I sit --</p> <p>21 Q I'm not going to put --</p> <p>22 A As I sit here --</p> <p>23 Q I'm not going to put a document in front</p> <p>24 of you and impeach you on this -- I'm not going to</p> <p>25 do that. We're on the same page.</p>
<p style="text-align: right;">Page 67</p> <p>1 believe, the statute that gives you the authority</p> <p>2 to -- to revise/set the bond schedule as a standing</p> <p>3 order; is that right?</p> <p>4 A I think so, yes.</p> <p>5 Q And to your knowledge, is there any other</p> <p>6 statute that either expands or limits that authority</p> <p>7 beyond 1105?</p> <p>8 A Yes. I mean -- and I said earlier that</p> <p>9 the preset bond schedule -- I explained the process,</p> <p>10 and I won't go back into that, but that's so many of</p> <p>11 these cases and subclassifications that are set by</p> <p>12 somebody other than us. The Supreme Court -- I said</p> <p>13 by statute, but that is by the Supreme Court</p> <p>14 statute.</p> <p>15 I -- you know, I know you talked about,</p> <p>16 and you probably are -- I -- not probably. You know</p> <p>17 much more about these cases. You're mentioning</p> <p>18 about the ones that don't carry jail time. So many</p> <p>19 of those are not even before us, because those are</p> <p>20 set by the Supreme Court and by statute to create</p> <p>21 consistency.</p> <p>22 I -- I think I'm answering your question.</p> <p>23 You said, What other areas or what other statutes or</p> <p>24 authority sets those bonds?</p> <p>25 And I -- I think I've answered your</p>	<p style="text-align: right;">Page 69</p> <p>1 A I don't even know if 1105 is the right</p> <p>2 statute cite. But, yes, ma'am.</p> <p>3 Q Are there -- again, that category of</p> <p>4 offenses that is within your purview, are there any</p> <p>5 other statutes that limits that broad category of</p> <p>6 offenses, your authority to set the bond schedule</p> <p>7 amount for those?</p> <p>8 A Not that I'm aware of as I sit here</p> <p>9 today.</p> <p>10 Q Okay. And when we talked about the bond</p> <p>11 schedule a few minutes ago and I asked whether there</p> <p>12 were -- the risk of flight was incorporated into the</p> <p>13 charge --</p> <p>14 A Sometimes, yes.</p> <p>15 Q -- that's based on the charge itself;</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q Not based on any individualized</p> <p>19 characteristics of the individual who has been</p> <p>20 charged with that offense; correct?</p> <p>21 A Correct. This is prior to an arrest of</p> <p>22 anyone.</p> <p>23 Q Right.</p> <p>24 A Yes.</p> <p>25 Q And so when we are talking about</p>

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<p style="text-align: right;">Page 70</p> <p>1 the individualized nature and whether there were</p> <p>2 individual factors in the bond schedule, to the</p> <p>3 extent there's any sort of factors in the bond</p> <p>4 schedule, those are necessarily limited to the</p> <p>5 factors of that offense, not any given person?</p> <p>6 A You're limiting more -- me more than I'm</p> <p>7 comfortable. But, yes, I -- I think so. I think</p> <p>8 you're right.</p> <p>9 Q Okay. All right. Let's switch gears.</p> <p>10 So for purposes of this next set of</p> <p>11 questions, I'm going to be referring to the bond</p> <p>12 docket. When I use that phrase, what I am</p> <p>13 describing is the appearance of a detainee in front</p> <p>14 of a judge 24 to 48 hours after arrest.</p> <p>15 Is that a fair characterization of bond</p> <p>16 docket? And if not, can you correct it?</p> <p>17 A I will adopt it.</p> <p>18 Q Okay. Before bond docket was</p> <p>19 implemented, which -- when was bond docket</p> <p>20 implemented?</p> <p>21 A I don't remember.</p> <p>22 Q If I said -- if I told you it was in the</p> <p>23 fall of 2018, October, I believe, does that sound</p> <p>24 about right?</p> <p>25 A Yes, ma'am.</p>	<p style="text-align: right;">Page 72</p> <p>1 not an attorney, excuse me -- a judge before they</p> <p>2 had been arrested and booked?</p> <p>3 MS. MOORE: Object to form.</p> <p>4 Read -- read your question again.</p> <p>5 I -- I got confused.</p> <p>6 MS. RYAN: Yeah.</p> <p>7 BY MS. RYAN:</p> <p>8 Q Prior to the creation of the daily bond</p> <p>9 docket, how long did it take for someone to see a</p> <p>10 judge after they were arrested and booked?</p> <p>11 A I think I've answered the question the</p> <p>12 best I could based upon CR 1. I -- before my time</p> <p>13 as presiding, I -- I -- I guess I should say,</p> <p>14 really, that's probably out -- I don't have any</p> <p>15 personal knowledge.</p> <p>16 Q If individuals were seeing a judge within</p> <p>17 48 hours of being booked and arrested -- arrested</p> <p>18 and booked, what was the purpose of creating the</p> <p>19 bond docket?</p> <p>20 A Because there had been -- I do not want</p> <p>21 to take this off track. It is not my purpose. But</p> <p>22 over the years, there have been -- we are so</p> <p>23 helplessly tangled now by using synonymous words or</p> <p>24 different terms synonymously.</p> <p>25 Initial appearance, initial arraignment,</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Okay. So prior to the creation of bond</p> <p>2 docket -- how long did people who were arrested and</p> <p>3 did not post the bond on the bond schedule, how long</p> <p>4 did they stay in jail before seeing a judge?</p> <p>5 A As soon as feasible, not to extend 48</p> <p>6 hours.</p> <p>7 Q Prior to the adoption of the bond docket?</p> <p>8 A Yes. I'm relying upon what -- I'm</p> <p>9 relying upon the directives. I think it's our --</p> <p>10 our CR 1 -- our CR 1, the -- the Local Rule CR 1.</p> <p>11 Q Understood. Which I understood set up</p> <p>12 the bond docket or my understanding of the Local</p> <p>13 Rule --</p> <p>14 A No. No. CR 2. CR 2.</p> <p>15 Q Okay. My question is: Prior to</p> <p>16 Administrative Order 2008 -- I mean, 2018-9 and</p> <p>17 2018-10 -- which I believe were administrative</p> <p>18 orders you issued; correct?</p> <p>19 A I -- I think. I mean, I'm going to take</p> <p>20 your word --</p> <p>21 Q Yeah.</p> <p>22 A -- if that --</p> <p>23 Q Prior to creation of the daily bond</p> <p>24 docket, how long did it take for someone to see an</p> <p>25 attorney after they had been arrested and booked --</p>	<p style="text-align: right;">Page 73</p> <p>1 bond setting, Riverside, all of those things, in my</p> <p>2 estimation, had become hopelessly tangled and needed</p> <p>3 to be clarified and that judges were reviewing</p> <p>4 within 24 hours the bond set in each case and the</p> <p>5 probable cause.</p> <p>6 And if you read CR 1, I believe it does</p> <p>7 direct them to review the probable cause within 24</p> <p>8 hours -- maybe 48, 24 to 48. But it is my</p> <p>9 estimation that that is a Riverside -- I'm talking</p> <p>10 about a Supreme Court case. That was a Riverside</p> <p>11 determination on probable cause.</p> <p>12 And the clarification for CR 2, to answer</p> <p>13 your question the best I can, was my best effort to</p> <p>14 try to clearly or more clearly state the objectives</p> <p>15 of the 14th Judicial District in a way everyone</p> <p>16 would understand where initial appearance, initial</p> <p>17 arraignment, those things became less significant</p> <p>18 with your understanding as long as you understood</p> <p>19 they -- somebody arrested that does not post bond</p> <p>20 immediately, is in front of a judge with a lawyer</p> <p>21 and a hearing as soon as possible, not to exceed 48,</p> <p>22 and the practice is to try to get it within 24.</p> <p>23 I hope I answered your question.</p> <p>24 Q You did. You did answer my question.</p> <p>25 But it seems like you said prior to</p>

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1 the adoption of bond docket, detainees were being
2 assessed by a judge within 24 hours per Local Rule
3 1 --
4 A I think it was 48 hours, but -- 48 hours.
5 And I think it even goes on to explain that that
6 function lasts six days a week. There was an
7 assignment of a judge for weekend duty to carry out
8 the function over the weekend, but not both days
9 like we do it now.
10 Q Okay. So prior to the adoption of what
11 I'm going to refer to as Administrative Order 9 and
12 10, detainees were being assessed by a judge within
13 24 to 48 hours of probable cause and their bond
14 amount.
15 It was just happening in multiple
16 different forum, and you were attempting to
17 consolidate it into a single forum?
18 MR. WILSON: Object to the form.
19 A Can I -- I think we're on the same page.
20 I -- you referred to AOs 9 and 10. Is there any way
21 I can see them?
22 BY MS. RYAN:
23 Q Yeah. Absolutely.
24 MS. RYAN: Gary, why don't you bring
25 up what was previously marked Tab I and

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1 what was previously marked Tab J.
2 These will be Exhibits 3 and 4, for
3 the record.
4 So in your binder, Your Honor, these
5 are Tab I and Tab J.
6 (Whereupon, Plaintiff's Exhibit
7 Musseman No. 3, AO-2018-09
8 Administrative Order Establishment of
9 Bond Docket, was marked for
10 identification.)
11 (Whereupon, Plaintiff's Exhibit
12 Musseman No. 4, AO-2018-10 Amended
13 Administrative Order Regarding
14 Pretrial Release Program, was marked
15 for identification.)
16 COURT REPORTER: Attorney Wilson,
17 your microphone is a little high. If you
18 could bring that down a little.
19 Thank you, sir.
20 MR. WILSON: Thank you.
21 BY MS. RYAN:
22 Q All right. Let's take a look at what's
23 been previously marked Tab I first, which is now
24 Exhibit 3.
25 Do you recognize this?

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1 A Yes, ma'am.
2 Q What is this?
3 A This is an administrative order
4 establishing the bond docket that I signed
5 October 3rd of two thousand, I think that's
6 eighteen, if memory serves right.
7 Q And this is a true and correct copy of
8 that administrative order?
9 A Yes, ma'am.
10 Q And moving forward, are you okay if I
11 call this AO-9 for purposes of our discussion?
12 A 100 percent.
13 Q Awesome.
14 All right. Why don't you take a look at
15 what was previously marked J, Exhibit [sic] J.
16 Do you recognize this document?
17 A Not yet.
18 Yes, I do now. Yes, ma'am.
19 Q What is this document?
20 A This is an amended administrative order
21 regarding pretrial release program, that 1105
22 statute I kept referring. It was signed by me in
23 October, as well, of 2018. It's obviously part and
24 parcel of the bond docket.
25 Q Does this appear to be a true and

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1 accurate copy? Is there anything that looks wrong
2 about it and --
3 A No, ma'am. I -- it looks true.
4 Q And it -- you did mention this was an
5 amended version. We may look at the original in a
6 moment, depending on time.
7 But this is the final version of the
8 administrative order; is that right?
9 A I will accept that.
10 Q And -- and I'm going to refer to this
11 today, what is Exhibit 4, as AO-10, if that works
12 for you?
13 A Yes, ma'am.
14 Q Great.
15 So going back to what we were discussing,
16 you testified that within 24 to 48 hours, a judge
17 was assessing each person who had been arrested and
18 detained.
19 What were they assessing?
20 A Prior to the bond docket?
21 Q Yes.
22 A I don't have personal knowledge of that.
23 Q Do you -- were judges assessing the bond
24 amount within 24 to 48 hours prior to the adoption
25 of AO-9 and 10?

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of 5816/2020

<p style="text-align: right;">Page 78</p> <p>1 MS. MOORE: Objection. Calls for</p> <p>2 speculation.</p> <p>3 A Ma'am, I -- I don't have personal</p> <p>4 knowledge of that.</p> <p>5 BY MS. RYAN:</p> <p>6 Q As presiding --</p> <p>7 A I --</p> <p>8 Q Go ahead. I apologize. I don't mean to</p> <p>9 interrupt you.</p> <p>10 A No. I -- I thought you were asking me as</p> <p>11 a fact witness, and I -- I don't have personal</p> <p>12 knowledge of that.</p> <p>13 Q As presiding judge, was it your</p> <p>14 understanding that the -- that judges were</p> <p>15 evaluating bond amounts between 24 and 48 hours</p> <p>16 after arrest prior to the adoption of AO-9 and 10?</p> <p>17 A It was my concern that there was</p> <p>18 confusion as to what exactly they were doing. That</p> <p>19 rule, I thought, was leading to confusion, and the</p> <p>20 reviews could have been by some judges to be</p> <p>21 Riverside hearings and other judges bond</p> <p>22 determinations.</p> <p>23 It was my estimate, as the presiding</p> <p>24 judge with a personal knowledge of those events, I</p> <p>25 felt that the rule had become confusing, and I</p>	<p style="text-align: right;">Page 80</p> <p>1 They're assigned to the family division. They're</p> <p>2 assigned to guardianships or to civil or to small</p> <p>3 claims. There's these judges that are serving in</p> <p>4 the weekend in an unfamiliar function.</p> <p>5 Anecdotally, from questions I heard that</p> <p>6 were asked of those judges about what to do on these</p> <p>7 bond reviews, I felt when I reviewed that CR 1, I</p> <p>8 think it's -- I'm citing it right, that it was not</p> <p>9 as clear as I wanted it to be.</p> <p>10 Q So your concern about the confusion was</p> <p>11 about the weekend special judges?</p> <p>12 A The -- about all of the language that</p> <p>13 even lawyers talk about and -- and even disagree on.</p> <p>14 They will be talking about initial appearance,</p> <p>15 initial arraignment, bond setting. They will be</p> <p>16 speaking to one another in colloquial terms about</p> <p>17 those -- those words and have in their mind</p> <p>18 different meanings or understanding of what they're</p> <p>19 talking about.</p> <p>20 Seeing that occur and seeing that same</p> <p>21 language in CR 1 is what led -- as presiding at</p> <p>22 least, that was the catalyst, if you will, to think</p> <p>23 that we needed to improve.</p> <p>24 Q So the -- the concerns were, one, how</p> <p>25 weekend judges were handling bond setting and, two,</p>
<p style="text-align: right;">Page 79</p> <p>1 wanted a more clear rule so everyone was marching in</p> <p>2 the same direction.</p> <p>3 Q And what led you to believe that the</p> <p>4 judges might be confused as to what was -- I'll stop</p> <p>5 there.</p> <p>6 What led you to believe the judges might</p> <p>7 be confused?</p> <p>8 A We assigned -- it was the weekend</p> <p>9 assignments. The weekend assignments go to a</p> <p>10 different special judge every weekend, and then they</p> <p>11 have what -- what I call the duty phone.</p> <p>12 So if there is a need for a judge, an</p> <p>13 emergency that needs to be reviewed, a search</p> <p>14 warrant or something on the weekend when the</p> <p>15 courthouse is closed, they have access to a special</p> <p>16 judge by that phone. That special judge was also</p> <p>17 responsible for the weekend bond docket, if you</p> <p>18 will.</p> <p>19 And remember, by that rule, that was held</p> <p>20 one day a week, either a Saturday or a Sunday. I</p> <p>21 don't recall. But that was done six days a week.</p> <p>22 You're handing out this duty, this</p> <p>23 weekend duty to special judges, some of which are</p> <p>24 assigned to the criminal division. Most of which</p> <p>25 are not. They're assigned to juvenile division.</p>	<p style="text-align: right;">Page 81</p> <p>1 the language that judges and practitioners were</p> <p>2 using to describe those initial appearances?</p> <p>3 A I think that's fair.</p> <p>4 Q Did you have concerns about the amount of</p> <p>5 time that defendants were being held without an</p> <p>6 opportunity to seek to reduce their bond?</p> <p>7 A As I studied this and met with groups, I</p> <p>8 formed that concern.</p> <p>9 Q So your initial concern was based on this</p> <p>10 weekend judges and the language people were using,</p> <p>11 but as you began studying the issue, you began to</p> <p>12 have additional concerns?</p> <p>13 A Fair.</p> <p>14 Q And what were those additional concerns?</p> <p>15 A That we needed a system that ensured that</p> <p>16 everyone that does not post their bond immediately</p> <p>17 gets in front of a judge within a reasonable time.</p> <p>18 My preference is 24 hours, hence the</p> <p>19 seven-day-a-week docket.</p> <p>20 But the best authority I could find from</p> <p>21 the Supreme Court and appellate courts was 48 hours.</p> <p>22 But that was -- the goal was 24 hours, with at least</p> <p>23 a -- a system in place where 48 would not ever be</p> <p>24 broken but for failure.</p> <p>25 And that was -- in that system transferred</p>

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<p style="text-align: right;">Page 82</p> <p>1 your question. That was -- I wanted a real clear</p> <p>2 rule that made sure that that happened and it</p> <p>3 happened for everyone.</p> <p>4 Q Okay. So once you began to study the</p> <p>5 issue, the issue of timing became a concern.</p> <p>6 Was there anything else that became a</p> <p>7 concern for you about the administration of bond as</p> <p>8 you began to study the issue?</p> <p>9 A Oh, I'm sure there was. I -- I'm sure</p> <p>10 there was. I --</p> <p>11 Q Anything you can recall today, beyond the</p> <p>12 timing issue?</p> <p>13 A A concern for me in setting bond?</p> <p>14 Q We mentioned that when you started</p> <p>15 studying the issue, the time it took that some --</p> <p>16 for someone to get in front of a judge to have their</p> <p>17 bond amount considered was one concern after you</p> <p>18 began studying the issue.</p> <p>19 I'm asking if there were any others?</p> <p>20 A Yes, there was. This -- I know this is</p> <p>21 very nuanced, and I don't mean to be nuanced, but</p> <p>22 having that bond docket where they would be</p> <p>23 available in front of the judge, represented by</p> <p>24 counsel -- and we made sure the public defender is</p> <p>25 appointed if they don't hire one by then -- gives</p>	<p style="text-align: right;">Page 84</p> <p>1 issued -- and is "issued" the fair word there? --</p> <p>2 issued an administrative order, does that presiding</p> <p>3 judge have the power to unilaterally reverse that</p> <p>4 order?</p> <p>5 A Yes, ma'am.</p> <p>6 Q Given that you're not presiding judge</p> <p>7 anymore, does Judge LaFortune have the ability to</p> <p>8 unilaterally reverse AO-9 and 10 that were issued</p> <p>9 while you were presiding judge?</p> <p>10 A No. But it's a very -- I have caveats.</p> <p>11 Q Okay.</p> <p>12 A And if -- if my understanding is wrong,</p> <p>13 then my answer changes.</p> <p>14 Q Okay.</p> <p>15 A We, as presiding, the entire body of</p> <p>16 elected judges, enacted by vote this bond docket and</p> <p>17 bond practice as a local rule. That was to ensure</p> <p>18 consistency, clarity, and permanency. It is more</p> <p>19 then an administrative order.</p> <p>20 And I believe that what I did -- I tried</p> <p>21 to clean up. If you go through, you have</p> <p>22 administrative orders from the different presidings</p> <p>23 that dealt with issues that are bond-related or at</p> <p>24 least the cousin to bond-related issues that go back</p> <p>25 into the '90s and '80s, probably.</p>
<p style="text-align: right;">Page 83</p> <p>1 them an opportunity to explain to the judge more who</p> <p>2 they are and for the judge to give an individualized</p> <p>3 consideration.</p> <p>4 One of the concerns that I started to</p> <p>5 develop -- and this is where I worry about the</p> <p>6 nuance -- I mentioned earlier there's this ever</p> <p>7 present tension between individualism and</p> <p>8 consistency.</p> <p>9 Without -- an example I can give you: I</p> <p>10 had, as a presiding, concern that the goal of</p> <p>11 consistency might start to overtake individualism in</p> <p>12 the sense that judges might read a bond amount in a</p> <p>13 bond schedule as some objective, correct de -- de</p> <p>14 fact -- de facto bond.</p> <p>15 That was another concern I had that I</p> <p>16 wanted to address so that they didn't feel like you</p> <p>17 had to find an exception that would somehow justify</p> <p>18 a bond lower than the bond schedule.</p> <p>19 Q Okay. Any other concerns?</p> <p>20 A Not that come to mind right now. If I --</p> <p>21 if I think of something, which I might later,</p> <p>22 I'll -- I'll interrupt you.</p> <p>23 Q Okay. All right. I'm -- I'm going to</p> <p>24 come back to those, but I want to -- very quickly,</p> <p>25 just so I understand, once a presiding judge has</p>	<p style="text-align: right;">Page 85</p> <p>1 I tried at the time -- as presiding, I</p> <p>2 think that I went through and, at least in an</p> <p>3 administrative order or otherwise, I think maybe by</p> <p>4 local rule -- it should be available in your</p> <p>5 discovery -- I went back and struck all of these</p> <p>6 other AOs once we got the local rule in place.</p> <p>7 So my understanding is that AO-10 and</p> <p>8 AO-9 were included in the AOs that I struck or set</p> <p>9 aside with the adoption of Local Rule CR 2.</p> <p>10 If my memory is incorrect and I did not</p> <p>11 include 9 and 10 in that order striking them, then</p> <p>12 my answer changes.</p> <p>13 Q I understand.</p> <p>14 So if those weren't struck, then</p> <p>15 theoretically, Judge LaFortune could strike them</p> <p>16 now, but your position is that Local Rule 2 codifies</p> <p>17 what was contained in these two?</p> <p>18 A Yes, ma'am.</p> <p>19 Q Okay. So let's talk about local rules.</p> <p>20 How -- you mentioned local rules are</p> <p>21 adopted by not just the presiding judge, but by --</p> <p>22 is it all district court judges or a specific</p> <p>23 division?</p> <p>24 A No. It's all the elected district and</p> <p>25 associate district judges and the judicial</p>

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1 early discussions of some -- some potential changes
2 to the way that bond was set in those initial
3 appearances?

4 A I -- I -- in these Vera meetings there
5 were -- gosh, there were clerks, jailers that would
6 do the -- the minute work and all the paperwork on
7 arrests. So there was sheriff's office represent --
8 the people there. There were DAs and public
9 defenders and so many groups. But that was part of
10 the broader conversation.

11 When I -- when you say "who," I mean all
12 of us, all the district judges, the DAs, public
13 defenders.

14 But this started a more -- at that time,
15 it was just more Vera incarceration rates, jail
16 population things. It started to crystallize more
17 that I wanted to focus or tease out bonds from that
18 broader population.

19 In 2017, in the conversations I -- I had
20 conversations with individuals, but my memory is
21 that I had conversations with those individuals when
22 I wanted to figure out logistically how in the world
23 to do something different. So I --

24 Q I think that's a fair pivot.

25 So you have talked about the broad

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1 conversations, and it sounds like at some point you
2 realized working on bond specifically might be a
3 pivot; is that fair?

4 A Yes. For me, yes.

5 Q And so did you start to engage in
6 discussions around that issue, the more narrow bond
7 issue at some point?

8 A Yes.

9 Q And about when was that?

10 A Like I said, I believe 2017. If you have
11 things --

12 Q Okay.

13 A If you have things that it's 2016, I
14 would not dispute it. Things run together. But it
15 was before I was presiding, is my memory.

16 Q Okay. And who were involved in those
17 more narrow discussions?

18 MS. MOORE: Who's in the background
19 making noise?

20 THE WITNESS: Am I okay to answer?

21 I didn't know if there has been an
22 objection made.

23 MS. MOORE: No. There's no

24 objection, Your Honor. But there's a --
25 there was a "pop" sound, no --

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<p style="text-align: right;">Page 90</p> <p>1 that -- I -- I don't know whose mic</p> <p>2 that's on.</p> <p>3 A The question to me was: Who were these</p> <p>4 conversations with about the more particular areas</p> <p>5 of bond? Is that fair?</p> <p>6 BY MS. RYAN:</p> <p>7 Q Exactly right.</p> <p>8 A It started with the public defender, the</p> <p>9 DA, I think Still She Rises. I think that's a -- a</p> <p>10 fair group.</p> <p>11 And then those discussions were -- my</p> <p>12 gosh, they weren't really productive in their</p> <p>13 infancy, and they didn't start to take form until</p> <p>14 2018, when I had become presiding.</p> <p>15 Q Who were involved in the conversations</p> <p>16 that matured from their -- from their infancy?</p> <p>17 A The DA, the public defender, and the</p> <p>18 court. Still She Rises was present at some of these</p> <p>19 meetings. And then other people that would have</p> <p>20 input were invited.</p> <p>21 I -- I believe -- not all of the</p> <p>22 meetings, but at times we talked with the supervisor</p> <p>23 of pretrial services. Rusty Roberts, who was the</p> <p>24 president of the bond association, participated.</p> <p>25 And when I say "the public defender," Corbin</p>	<p style="text-align: right;">Page 92</p> <p>1 Q And were, for example, some of those</p> <p>2 logistical challenges that folks were concerned</p> <p>3 about?</p> <p>4 A Seven-day-a-week court over the weekend</p> <p>5 and even holidays, and the video connections, and if</p> <p>6 they would be able to be staffed by DAs and public</p> <p>7 defenders, and if there would be ample security for</p> <p>8 those attorneys, and if the attorneys would then be</p> <p>9 in jail by video or they would be in the courtroom,</p> <p>10 and how would a judge issue any orders if the --</p> <p>11 was -- was the minute clerk going to be available?</p> <p>12 So if the clerk's office sends somebody,</p> <p>13 would there be some way to make these notations and</p> <p>14 enter the minutes later? What was going to be the</p> <p>15 process of couriering information back and forth,</p> <p>16 whether it's a pauper's affidavit or something from</p> <p>17 the jail to the attorneys?</p> <p>18 I don't mean to go on and bore you, there</p> <p>19 was just so many -- and I -- I'm probably forgetting</p> <p>20 about a hundred and fifty-two things, because when</p> <p>21 you get into the nuts and bolts of something like</p> <p>22 that, there's just all of these logistical things</p> <p>23 that I -- I might have thought about or did not</p> <p>24 think about, and many of the times I had thought</p> <p>25 about and really misapprehended the consequence or</p>
<p style="text-align: right;">Page 91</p> <p>1 Brewster did participate.</p> <p>2 But a lion's share of the work, quite</p> <p>3 honestly, was Stuart Southerland. He was the</p> <p>4 representative of the Public Defender's Office, I</p> <p>5 would say most all of the time, and was -- I</p> <p>6 probably met with Stuart Southerland more than</p> <p>7 anyone else.</p> <p>8 Q And so what was -- of those groups you</p> <p>9 just mentioned, the DA, public defender, Still She</p> <p>10 Rises, what was their role in formulating what would</p> <p>11 eventually become AO-9?</p> <p>12 A Logistics. You know, it's easy to be the</p> <p>13 command general up high on the hill and give these</p> <p>14 edicts to carry out, but they're doomed to fail</p> <p>15 unless the people that are in the trenches every</p> <p>16 day, knowing how things work, can give you feedback</p> <p>17 as to why there might be kinks in the hose that you</p> <p>18 don't foresee or people that you need to involve in</p> <p>19 the loop, you know, because these did broaden based</p> <p>20 on these conversations to have to include personnel</p> <p>21 from the sheriff's office.</p> <p>22 So I guess, to answer your question, the</p> <p>23 purpose that each of them played was their</p> <p>24 perspective, how it would be effected, and the</p> <p>25 logistical challenge of implementing this.</p>	<p style="text-align: right;">Page 93</p> <p>1 how those areas would be affected.</p> <p>2 Q At the end of these discussions, you then</p> <p>3 issued AO-9; is that fair?</p> <p>4 A Yes.</p> <p>5 Q And was there any -- what was the</p> <p>6 reaction to the issuance of the administrative</p> <p>7 order?</p> <p>8 A By who?</p> <p>9 Q Generally.</p> <p>10 Did you receive positive feedback? Was</p> <p>11 there a lot of negative feedback?</p> <p>12 A I am probably hypersensitive to it</p> <p>13 because I felt like I was -- I mean, I was in the</p> <p>14 middle of it.</p> <p>15 It was negative.</p> <p>16 Q And who did you receive negative feedback</p> <p>17 from?</p> <p>18 A The Bondsman's Association was very</p> <p>19 negative and did not like what I was doing.</p> <p>20 Whether it's true or not, I felt that the</p> <p>21 DA's office did not like this. And at some point,</p> <p>22 they really quit attending the hearing -- the</p> <p>23 meetings. So I really was without their input.</p> <p>24 The sheriff's office was -- you know,</p> <p>25 they weren't -- they were a little bit. And they</p>

<p style="text-align: right;">Page 94</p> <p>1 said -- the sheriff said, We are going to make this 2 happen.</p> <p>3 But the personnel level, you could tell, 4 it was negative, because now they're working on 5 weekends.</p> <p>6 I -- I am sorry. I'm answering from 7 feelings. I'm probably too hypersensitive. I was 8 in the middle of it. I didn't get any attaboys.</p> <p>9 Q No.</p> <p>10 A It was negative.</p> <p>11 Q Yeah. No. It -- I -- it's super 12 helpful, because it's helpful for me to understand 13 how it was perceived at the time.</p> <p>14 A The Public Defender's Office is separate. 15 They were positive.</p> <p>16 Q Okay. Can you -- to the extent you -- 17 let me rephrase.</p> <p>18 What concerns or negative feedback did 19 you receive from the Bondsman's Association 20 specifically about what you were doing in the order? 21 (Whereupon, the court reporter 22 requests clarification.)</p> <p>23 MS. RYAN: In the order.</p> <p>24 A I can't really answer that. It wasn't 25 specific. Again, it's just the way I would</p>	<p style="text-align: right;">Page 96</p> <p>1 producing bonds that were too low.</p> <p>2 Before that, he expressed before -- you 3 know, when we were in the process of trying to 4 implement the docket, he was relaying frustrations 5 due to, I think, more legitimate logistical concerns 6 back in 2017 -- you know, it seems like '16, '17 we 7 started talking about this.</p> <p>8 And, in fact, what you should have in 9 discovery -- if it -- if my memory is correct, if it 10 would comport with my memory to validate it, you 11 should see AOs that were signed by the previous 12 judge, which was Judge Nightingale, and they were 13 administrative orders to the effect of implementing 14 what she thought was a solid recommendation from the 15 Vera research.</p> <p>16 And that was a way to stop bond stacking. 17 You'd have one major arrest offense, and then you'd 18 have seven or eight add-ons, and then you would end 19 up with this bond that maybe wasn't really 20 proportional because of all these other bonds. So 21 she administered an AO that said the lead charge 22 would be the only bond.</p> <p>23 That did legitimately cause a great deal 24 of confusion with bondsmen and also the jailers. 25 They were -- the -- the minute clerks, if you will,</p>
<p style="text-align: right;">Page 95</p> <p>1 summarize the criticism. I felt that -- this could 2 be wrong. It was my feeling. I -- they -- they 3 like status quo.</p> <p>4 BY MS. RYAN:</p> <p>5 Q Did anyone express --</p> <p>6 A So you --</p> <p>7 Q Maybe -- to get away from feelings, did 8 anyone from the Bondsman's Association at all 9 express criticism of the administrative order?</p> <p>10 A To me?</p> <p>11 Q Yes.</p> <p>12 A I don't think so. Rusty Anderson -- 13 Rusty Anderson -- Rusty Roberts expressed many times 14 disappointment, concern, frustration about the 15 process, that I call the process of change.</p> <p>16 But, no, I don't -- no one came from -- 17 to me specifically and said this or that about AO-9 18 or AO-10.</p> <p>19 Q So Mr. Roberts, what -- can you recall 20 what things he was concerned about in regards to 21 AO-9, AO-10, Local Rule 2, the bond docket?</p> <p>22 A Not really. But I'll tell you my memory, 23 if it's acceptable.</p> <p>24 My memory, really the big umbrella of his 25 concerns, the bonds were -- this docket was</p>	<p style="text-align: right;">Page 97</p> <p>1 at the jail that processed the booking paperwork 2 could not figure it out and were setting bonds on 3 the wrong -- on -- on the wrong charges. And then 4 they would pick a charge and set a bond.</p> <p>5 And then the DA's office would look at 6 the case and only file a few of the requested 7 charges from the police officer, which may or may 8 not even include the one they set bond on. And 9 there was confusion then, if they had made bond, was 10 that bond still good? I don't need to go through 11 the litany.</p> <p>12 But he expressed what I considered some 13 legitimate logistical concerns in the early stages, 14 '17, '18, with the logistics and confusion created 15 at the jail with trying to make these changes. And 16 then it kind of progressed into, I think, a general 17 dissatisfaction with a -- a new idea or the new 18 docket.</p> <p>19 BY MS. RYAN:</p> <p>20 Q What -- how did you respond to his 21 concerns?</p> <p>22 A I tried to be transparent and upfront.</p> <p>23 I told him, This isn't going away. That 24 this is going to happen. I'm sorry you're 25 frustrated.</p>

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<p style="text-align: right;">Page 98</p> <p>1 But I try to be transparent. I -- I</p> <p>2 don't -- I don't think I ever avoided an unpleasant</p> <p>3 conversation with him, just -- I think I was</p> <p>4 upfront.</p> <p>5 Q What about the DA's office? You</p> <p>6 mentioned that they had some feedback -- some</p> <p>7 negative feedback.</p> <p>8 Do you recall any of that feedback being</p> <p>9 shared with you directly?</p> <p>10 A There was an e-mail -- and I can't even</p> <p>11 remember the contents. There was an e-mail from</p> <p>12 Erik Grayless, who was the first assistant at the</p> <p>13 time. I don't remember the contents.</p> <p>14 And it was not just to me. I think it</p> <p>15 was kind of everybody. And I remembered -- without</p> <p>16 remembering the contents right now, I can remember</p> <p>17 the feeling that I had that they're not helping with</p> <p>18 this.</p> <p>19 Then it got back to me, a statement he</p> <p>20 had made, but he did not give it to me directly.</p> <p>21 Q And what was that statement?</p> <p>22 A That he doesn't think he needs to keep</p> <p>23 coming to the meetings because I'm going to do what</p> <p>24 I think is right regardless of his input.</p> <p>25 Q Did you receive any other criticism,</p>	<p style="text-align: right;">Page 100</p> <p>1 A Yeah. Monday through Friday.</p> <p>2 Q So did this document -- I guess my</p> <p>3 point -- what I'm trying to get at is the effect of</p> <p>4 this document.</p> <p>5 You have now set up the bond docket with</p> <p>6 this document?</p> <p>7 A Yes.</p> <p>8 Q Does this -- does this document, as we</p> <p>9 discussed earlier, is one of the ways, as presiding</p> <p>10 judge, you were able to exercise your supervisory</p> <p>11 control, does it establish an evidentiary standard</p> <p>12 to be used at bond docket hearings?</p> <p>13 MS. MOORE: Object to the form.</p> <p>14 A An evidentiary standard.</p> <p>15 No, I don't -- I don't think it does.</p> <p>16 BY MS. RYAN:</p> <p>17 Q Does it require that the judge presiding</p> <p>18 over the bond docket make findings about what people</p> <p>19 can -- can afford?</p> <p>20 A No, it does not.</p> <p>21 Q Does it require considerations of any</p> <p>22 methods of -- or controls of relief -- when I say</p> <p>23 "control" -- not relief -- controls of release.</p> <p>24 When I say "controls of release," does</p> <p>25 that mean anything to you?</p>
<p style="text-align: right;">Page 99</p> <p>1 directly or indirectly, from the DA's office?</p> <p>2 A No, ma'am.</p> <p>3 Q And then you also mentioned that you --</p> <p>4 this was more of a feeling about the sheriff's</p> <p>5 office.</p> <p>6 Any criticism or negative feedback that</p> <p>7 you received, directly or indirectly, from the</p> <p>8 sheriff's office?</p> <p>9 A No. They promised -- they promised that</p> <p>10 they would figure out a way to make this work, and</p> <p>11 they did at every level.</p> <p>12 Q So quickly talking about -- we talked a</p> <p>13 lot about the process.</p> <p>14 Talking about what this order actually</p> <p>15 did, in your mind did this order set out an</p> <p>16 evidentiary standard for the bond docket?</p> <p>17 A I don't understand your question.</p> <p>18 Q Let me take a step back.</p> <p>19 So I'm looking at AO-9, which established</p> <p>20 the bond docket; is that fair?</p> <p>21 A Yes.</p> <p>22 Q How many days a week did this contemplate</p> <p>23 the bond docket being run?</p> <p>24 A I don't think it did. Did it -- hold on.</p> <p>25 Q Maybe paragraph A?</p>	<p style="text-align: right;">Page 101</p> <p>1 A No.</p> <p>2 Q Maybe a -- nonmonetary conditions of</p> <p>3 release?</p> <p>4 Is that better?</p> <p>5 A Okay.</p> <p>6 Q Does this document set out when</p> <p>7 nonmonetary conditions of release should be applied</p> <p>8 as opposed to monetary conditions of release?</p> <p>9 A No. But I'm not comfortable with just</p> <p>10 no. There's a no, but.</p> <p>11 Q Okay. What's the but?</p> <p>12 A The AO-10.</p> <p>13 Q Okay. So let's take a look at AO-10.</p> <p>14 Does AO-10 require findings of ability to</p> <p>15 pay?</p> <p>16 A No.</p> <p>17 Q Does AO-10 require that defendants --</p> <p>18 that all defendants are considered for nonmonetary</p> <p>19 conditions of release?</p> <p>20 A All right. I'm sorry. I was reading</p> <p>21 that.</p> <p>22 Would you restate your question?</p> <p>23 Q Does AO-10 require that all defendants</p> <p>24 are considered for nonmonetary conditions of</p> <p>25 release?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A All defendants?</p> <p>2 Q Yes.</p> <p>3 A No. No.</p> <p>4 Q Beyond these two documents, did you, as</p> <p>5 presiding judge, issue any other policy guidance</p> <p>6 related to the administration of the bond docket?</p> <p>7 A Policy guidance, no.</p> <p>8 Q Did you issue or create any training</p> <p>9 documents with regard to the administration of the</p> <p>10 bond docket?</p> <p>11 A There were training documents produced,</p> <p>12 but I think at a later time. At this time, I don't</p> <p>13 think so.</p> <p>14 Q Did you -- did your administrative chief</p> <p>15 at the time, which I believe was Judge Moody,</p> <p>16 produce any policy guidance for the judges that</p> <p>17 would be presiding over the bond docket with regards</p> <p>18 to AO-9 and 10?</p> <p>19 A Policy guidance, not that I know of. I</p> <p>20 just think counsel in discussion.</p> <p>21 Q And any training or -- any training</p> <p>22 documents that he might have issued with regard to</p> <p>23 AO-9 and 10?</p> <p>24 A No.</p> <p>25 Q Did you hold any meetings to explain with</p>	<p style="text-align: right;">Page 104</p> <p>1 administration of the bond docket during those</p> <p>2 meetings?</p> <p>3 A Wow.</p> <p>4 Q Let me -- I'll be narrower.</p> <p>5 Did you discuss what the evidentiary</p> <p>6 standards should be for anything he was considering</p> <p>7 during the administration of the bond docket?</p> <p>8 A I am sure we did. I don't -- under your</p> <p>9 definition or classification of evidentiary</p> <p>10 standard, I -- I don't know, but -- but I think</p> <p>11 there were conversations that would barely fall</p> <p>12 under that broad umbrella.</p> <p>13 Q Did you discuss with Judge Hiddle who he</p> <p>14 could hear evidence from during the administration</p> <p>15 of the bond docket?</p> <p>16 A Yes.</p> <p>17 Q And who did -- did you provide him with</p> <p>18 guidance as to who he could hear information from?</p> <p>19 A I tried, I thought.</p> <p>20 Q Okay. And who did you suggest that he</p> <p>21 could take information from for the purposes of</p> <p>22 making findings on the bond docket?</p> <p>23 A The defendant, his lawyer, State,</p> <p>24 whatever they had to present.</p> <p>25 Q Did you suggest that he could also take</p>
<p style="text-align: right;">Page 103</p> <p>1 all of the judges who would be presiding over --</p> <p>2 strike that.</p> <p>3 So my understanding is that after these</p> <p>4 were issued, there was a single judge that was going</p> <p>5 to preside over the bond docket; is that right?</p> <p>6 A Yes.</p> <p>7 Q And that was Judge Hiddle?</p> <p>8 A Yes.</p> <p>9 Q Did you have conversations with Judge</p> <p>10 Hiddle regarding the administration of the bond</p> <p>11 docket after issuing these two administrative</p> <p>12 orders?</p> <p>13 A Yes.</p> <p>14 Q How many times did you meet with Judge</p> <p>15 Hiddle to discuss administration of the bond docket?</p> <p>16 A I don't know.</p> <p>17 Q More than once?</p> <p>18 A Yes.</p> <p>19 Q More than five times?</p> <p>20 A I'm sure there was more than five</p> <p>21 meetings.</p> <p>22 Q More than ten times?</p> <p>23 A Now I don't know. Five to ten sounds</p> <p>24 like a fair estimate.</p> <p>25 Q And what did you all discuss about the</p>	<p style="text-align: right;">Page 105</p> <p>1 into account anything pretrial services shared</p> <p>2 during the administration of the bond docket?</p> <p>3 A I -- boy. I don't have that specific</p> <p>4 memory, but I can't imagine that I did not.</p> <p>5 Q What about any bail bondsmen in the room,</p> <p>6 did you suggest that he could take that as a part of</p> <p>7 the evidence he was considering for purposes of</p> <p>8 setting bond?</p> <p>9 A No. I don't think we ever discussed it.</p> <p>10 Q Okay. Did you discuss the ability of --</p> <p>11 did you discuss what findings he needed to make for</p> <p>12 purposes of setting bond when he was administering</p> <p>13 the bond docket?</p> <p>14 A I'm sure we did, yes.</p> <p>15 Q Did he --</p> <p>16 A And I --</p> <p>17 Q Go ahead.</p> <p>18 A I -- you probably know this, and I'm</p> <p>19 doing what you should never do in a deposition, but</p> <p>20 that is just offering information.</p> <p>21 The context of these conversations, it --</p> <p>22 these AO-9 and 10, back in that time, the idea that</p> <p>23 we were going to hit the ground running with a</p> <p>24 seven-day-a-week docket was -- I said it before --</p> <p>25 this in my estimation was not a good process and</p>

<p style="text-align: right;">Page 106</p> <p>1 not an event.</p> <p>2 AO-9 and AO-10 were not the end all, be</p> <p>3 all. They were the first step. I felt that we</p> <p>4 needed to move on it, and we needed to get started</p> <p>5 and make corrections and -- you know, course</p> <p>6 corrections and improvements once we got the docket</p> <p>7 started. So this was going to evolve into what it</p> <p>8 is today.</p> <p>9 The conversations then, based upon that</p> <p>10 backdrop of information, the conversations I had</p> <p>11 with Judge Hiddle were logistical. How many people</p> <p>12 are we able to do in a day? Are you able to hear</p> <p>13 what they have to say? Are you limited by what they</p> <p>14 want to say or present to you by time? Are there</p> <p>15 ways that we could improve this docket? Do you need</p> <p>16 more time? Do we need to start it at a different</p> <p>17 time? Do we need to break it out?</p> <p>18 And we would reference back -- one of the</p> <p>19 things we did to kind of try to train ourselves to</p> <p>20 get ready for this was -- in -- in addition to</p> <p>21 meetings, was observations. I had gone with Judge</p> <p>22 Hiddle and also the public defender to Oklahoma</p> <p>23 County to watch and observe the way they did a bond</p> <p>24 docket.</p> <p>25 So that builds at least, I think, a fair</p>	<p style="text-align: right;">Page 108</p> <p>1 A I believe I did. I -- I told him on the</p> <p>2 minutes -- by minute.</p> <p>3 Q So earlier we talked about the bond</p> <p>4 reduction hearings that you held as a district court</p> <p>5 judge on a felony docket.</p> <p>6 Did you suggest to Judge Hiddle that the</p> <p>7 same types of findings should be made in -- on the</p> <p>8 bail docket?</p> <p>9 A I didn't use me as an example.</p> <p>10 Q Was your expectation that Judge Hiddle</p> <p>11 would make findings -- well, let me take one step</p> <p>12 back.</p> <p>13 Is there -- did you discuss having a</p> <p>14 court reporter in the room with Judge Hiddle during</p> <p>15 the bond docket?</p> <p>16 A Not that I remember.</p> <p>17 Q Okay. So earlier when we spoke about the</p> <p>18 bond hearings that you held in your courtroom, you</p> <p>19 mentioned that when you did not have a court</p> <p>20 reporter, you made sure that the clerk entered</p> <p>21 certain minutes into the written record.</p> <p>22 Do you remember that discussion?</p> <p>23 A I remember that discussion.</p> <p>24 Q Did you instruct Judge Hiddle as to the</p> <p>25 types of things that needed to be entered into the</p>
<p style="text-align: right;">Page 107</p> <p>1 backdrop of information for you to understand, at</p> <p>2 least the context and the time that I was meeting</p> <p>3 with Hiddle. It was very logistical driven. I --</p> <p>4 we had a lot of people to get through, and there</p> <p>5 were times he had frustration that he wasn't able to</p> <p>6 get to the information he wanted, or how could he</p> <p>7 get the information he wanted in a timely manner</p> <p>8 knowing there's 70 people on the docket?</p> <p>9 Q That makes complete sense to me. And I</p> <p>10 appreciate that a number of these conversations</p> <p>11 dealt with logistics. I'm trying to determine if</p> <p>12 there was anything else, specifically the categories</p> <p>13 I'm going through, that you discussed with him</p> <p>14 beyond just those logistical things.</p> <p>15 So, for instance, did you discuss with</p> <p>16 Judge Hiddle how to make findings after having made</p> <p>17 a determination on what the bond amount should be?</p> <p>18 A I have no independent recollection of</p> <p>19 that, but I can't -- I -- I'm sure I did. I'm sure</p> <p>20 he had questions.</p> <p>21 Q Do you recall what you said to him?</p> <p>22 A No.</p> <p>23 Q And did you discuss with Judge Hiddle how</p> <p>24 those findings should be memorialized in the docket</p> <p>25 or a written record?</p>	<p style="text-align: right;">Page 109</p> <p>1 minute record for a given bond docket hearing?</p> <p>2 A We talked about the minutes, and that is</p> <p>3 the extent of my memory.</p> <p>4 Q So you don't recall whether you</p> <p>5 instructed him to provide certain things as a part</p> <p>6 of the written record?</p> <p>7 A I do not.</p> <p>8 Q Okay. All right. At some point, Judge</p> <p>9 Hiddle -- I actually have this date -- was replaced</p> <p>10 by Judge Guten on the bond docket, I believe perhaps</p> <p>11 at the end of 2019, 2020.</p> <p>12 Does that sound right?</p> <p>13 A It wasn't 2020. I thought -- yeah, '19,</p> <p>14 I think.</p> <p>15 Q You're right. You're right. You have --</p> <p>16 you have absolutely corrected me correctly.</p> <p>17 A Okay.</p> <p>18 Q I believe maybe it was early in 2019.</p> <p>19 A Yeah.</p> <p>20 Q Does that sound more correct?</p> <p>21 A Yeah. Yeah.</p> <p>22 Q Okay. So Judge Hiddle was the presiding</p> <p>23 judge over the bond docket from when it was</p> <p>24 established in October of 2018 until -- would around</p> <p>25 February 2019 sound about right?</p>

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<p style="text-align: right;">Page 110</p> <p>1 A Yes, ma'am.</p> <p>2 Q Okay. So then at that point, who took</p> <p>3 over the bond docket?</p> <p>4 A Judge Guten.</p> <p>5 Q And did you have conversations with Judge</p> <p>6 Guten about administration of the bond docket?</p> <p>7 A Yes.</p> <p>8 Q Did you have similar conversations with</p> <p>9 Judge Guten as you had with Judge Hiddle about the</p> <p>10 administration of the bond docket?</p> <p>11 A Yes. But the docket was starting to take</p> <p>12 shape. More so, the conversations with Judge Guten</p> <p>13 were a little different. They weren't so much:</p> <p>14 What does this look like every day? What can we do</p> <p>15 to give you the resources we need? It was more</p> <p>16 practical, I thought.</p> <p>17 Q Okay. And so when you say, "It was more</p> <p>18 practical," what did those discussions entail?</p> <p>19 A He was a new judge, and I -- and I think</p> <p>20 that's relevant to understand, that as I was talking</p> <p>21 with him, I was talking with him as a presiding to a</p> <p>22 new judge. And sometimes new judges, I -- I -- I</p> <p>23 feel that I -- that they need a little bit of</p> <p>24 confidence and support, and I was encouraging him to</p> <p>25 make his decisions without fear or favor and just</p>	<p style="text-align: right;">Page 112</p> <p>1 As I had stated, whether I'm right or I'm</p> <p>2 wrong, I sensed there was negative reaction to this</p> <p>3 docket, which meant, in my mind at the time, he was</p> <p>4 in the eye of the storm. So he was a new judge in</p> <p>5 the eye of a storm with negativity.</p> <p>6 My conversations were not about how to do</p> <p>7 his job. I mean, obviously, I focused on things</p> <p>8 that I thought were, you know, matters of importance</p> <p>9 in bond settings, but it was to encourage him to</p> <p>10 give me open, honest feedback about the</p> <p>11 administration of the docket and to just do the job</p> <p>12 without fear or favor, even if it was a pretty</p> <p>13 intense atmosphere.</p> <p>14 Q Earlier you mentioned that, when speaking</p> <p>15 with Judge Hiddle, you knew that there would be</p> <p>16 corrections and improvements to the bond docket as</p> <p>17 it evolved?</p> <p>18 A Yes.</p> <p>19 Q Do you believe there were corrections and</p> <p>20 improvements that occurred during Judge Hiddle's</p> <p>21 tenure as presiding -- as the judge presiding over</p> <p>22 the bond -- bond docket?</p> <p>23 A I can't answer that question, based upon</p> <p>24 my lack of memory, as to when we went to</p> <p>25 seven-day-a-week court when his tenure ended. There</p>
<p style="text-align: right;">Page 111</p> <p>1 call them.</p> <p>2 And the first and foremost concerns are</p> <p>3 these people coming back to court. And if he thinks</p> <p>4 they are, figure out a way to give them conditions</p> <p>5 that are fair.</p> <p>6 I'm trying to think. 'Cause I know with</p> <p>7 him, I did have the conversation. I know it sounds</p> <p>8 nuanced, but it's -- the concern I raised earlier.</p> <p>9 I said, you know, Don't consider the bond set amount</p> <p>10 as some de facto go-to where you're looking for an</p> <p>11 exception or a reason to come off that.</p> <p>12 I said, You're calling it. It's a de</p> <p>13 novo look. Take a fresh look.</p> <p>14 Q So would you characterize your</p> <p>15 conversations -- strike that.</p> <p>16 So during your conversations with Judge</p> <p>17 Guten, you focused on, it sounds like, more how to</p> <p>18 make these bond decisions than the -- the pure</p> <p>19 administration of the docket; is that fair?</p> <p>20 A No, not how to make the decisions. It</p> <p>21 was -- I was trying not only to deal with</p> <p>22 administration, but try to give him the confidence</p> <p>23 that he was -- he had all of the independent</p> <p>24 discretion that he needed, and he was to -- to</p> <p>25 employ it.</p>	<p style="text-align: right;">Page 113</p> <p>1 was improvements. I don't know when his tenure</p> <p>2 ended and when Guten started and when we went to</p> <p>3 seven days. I --</p> <p>4 Q So that --</p> <p>5 A -- don't have a --</p> <p>6 Q That's fair. Let's take that timing out.</p> <p>7 Since the beginning of the administration</p> <p>8 of bond docket, what corrections and improvements do</p> <p>9 you believe have been made to bond docket?</p> <p>10 A I think the seven-day-a-week was an</p> <p>11 improvement, and that was an evolution. The first</p> <p>12 times that that docket happened, it was seven days a</p> <p>13 week, the weekends and holidays, were performed by</p> <p>14 the judge and staff actually at the jail.</p> <p>15 That was in quite a few -- quite a few</p> <p>16 issues, quite a few issues. And some paperwork</p> <p>17 issues were created. Information transmittal was a</p> <p>18 big hurdle.</p> <p>19 And Judge Guten was in at that time, and</p> <p>20 he had agreed to take over figuring out how to do</p> <p>21 this by video hookup at the jail. And he worked</p> <p>22 with the Public Defender's Office, and I think the</p> <p>23 DA's office was even helpful in this, and the</p> <p>24 sheriff's office, getting video hookups at the jail</p> <p>25 so that you can do that during the</p>

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<p style="text-align: right;">Page 114</p> <p>1 weekend with staff at the courthouse and the public</p> <p>2 defenders, with somebody at the courthouse and a</p> <p>3 public defender out at the jail and the sheriffs and</p> <p>4 all the inmates at the jail.</p> <p>5 That is, I guess, the first and foremost,</p> <p>6 I -- I think, improvement to that docket as how it</p> <p>7 looked then versus now, and just over time the flow</p> <p>8 of receiving communication from the Public</p> <p>9 Defender's Office. And I -- I say "Public</p> <p>10 Defender's Office." Anybody that has a private</p> <p>11 attorney or Still She Rises is welcome to attend,</p> <p>12 but it's a -- a large majority, most all of these</p> <p>13 folks at that time were by the Public Defender's</p> <p>14 Office.</p> <p>15 I think over time, trial and error, they</p> <p>16 have improved greatly on being able to communicate</p> <p>17 what they think is important, what they want the</p> <p>18 judge to know for setting a bond. And now this</p> <p>19 is -- if the question was me, what improvements I</p> <p>20 made, this isn't about me at all.</p> <p>21 This is -- the DA's office really got on</p> <p>22 board. Whatever temporary frustration that they</p> <p>23 must have had during the implementation process</p> <p>24 early on, they quickly got over, and they were, in</p> <p>25 my estimation, a huge help because at least that's</p>	<p style="text-align: right;">Page 116</p> <p>1 might not be the best term, but my term was ad hoc</p> <p>2 training or dialogue.</p> <p>3 Judge Guten was helpful in that process</p> <p>4 and had really kind of taken not only the</p> <p>5 responsibility of the docket serious, but he also</p> <p>6 took very serious asking questions and assisting</p> <p>7 others in training them to do the docket and</p> <p>8 answering questions they had about bonds, bond</p> <p>9 settings, things like that.</p> <p>10 Q And then how do you believe -- I think,</p> <p>11 as a part of that, when we were talking about</p> <p>12 consistency, you were worried about that consistency</p> <p>13 overtaking an individualized determination.</p> <p>14 Do you believe that bond docket has</p> <p>15 improved the individualized determinations of bond?</p> <p>16 A Yes.</p> <p>17 And please understand, I -- I think</p> <p>18 you've misplaced my concern about consistency</p> <p>19 overriding individualized assessment. That was from</p> <p>20 some of the confusion that I saw in -- in CR 1.</p> <p>21 Just so we're sure.</p> <p>22 Q Yeah.</p> <p>23 A Yes, to answer your question. This time,</p> <p>24 yes, I believe the bond docket has improved and</p> <p>25 individualized assessment has --</p>
<p style="text-align: right;">Page 115</p> <p>1 the other side of the dynamic that -- that's</p> <p>2 represented. They -- they now are a participant and</p> <p>3 have good feedback.</p> <p>4 Those were all improvements.</p> <p>5 Q Many of those improvements, fairly, are</p> <p>6 what I would consider logistical improvements.</p> <p>7 Do you -- have you seen -- when we began</p> <p>8 talking about the bond docket, you said you had two</p> <p>9 concerns about how things were going at the time.</p> <p>10 One was the timing it was taking someone to see a</p> <p>11 judge, and two was the consistency.</p> <p>12 Do you believe that the bond docket has</p> <p>13 improved the consistency of making an individualized</p> <p>14 determination?</p> <p>15 A Yes.</p> <p>16 Q So you believe the special judges that</p> <p>17 are -- and, again, when I say "now," I mean during</p> <p>18 your time as presiding judge -- were able to both</p> <p>19 provide consistent -- let me strike that.</p> <p>20 How do you believe that the bond docket</p> <p>21 has improved consistency?</p> <p>22 A Judge Guten was helpful.</p> <p>23 You know, you talked about earlier some</p> <p>24 of the things that you do as a presiding are policy</p> <p>25 driven, and others are -- I -- my term -- and it</p>	<p style="text-align: right;">Page 117</p> <p>1 Q And --</p> <p>2 A -- improved.</p> <p>3 Q -- what -- how -- what is that belief</p> <p>4 based on?</p> <p>5 A From conversations with not only Guten,</p> <p>6 but other judges that have covered it on the</p> <p>7 weekend, as well as conversations that I had -- at</p> <p>8 the time, these are -- these are kind of old</p> <p>9 conversations, but conversations that I had with the</p> <p>10 public defender at the time who was monitoring jail</p> <p>11 population.</p> <p>12 And the jail population was ticking down</p> <p>13 as that docket was growing, which tells me, at</p> <p>14 least, that there is some de novo and -- and better</p> <p>15 individualized assessment of the in-custody people</p> <p>16 presenting on the bond docket.</p> <p>17 Q All right. Coming back to -- we talked a</p> <p>18 little bit about your conversations with Hiddle</p> <p>19 about running that docket. We talked about your</p> <p>20 conversations with Judge Guten about running that</p> <p>21 docket.</p> <p>22 Beyond those conversations and the actual</p> <p>23 AO-9 and 10 and then later Local Rule 2, during your</p> <p>24 time as presiding judge, is there any other policy,</p> <p>25 documents, or training documents that should look</p>

<p style="text-align: right;">Page 118</p> <p>1 to to understand how you believe the bond docket</p> <p>2 should be administrated?</p> <p>3 A There was a document, and it's more -- I</p> <p>4 would -- less policy, but more bench material, bench</p> <p>5 book material for a -- the practicing judge that</p> <p>6 Guten and the chief of the division -- I think Judge</p> <p>7 Moody at the time -- there were probably several</p> <p>8 people that played a factor, but there was a card,</p> <p>9 if you will, a laminated card, front and back, that</p> <p>10 was kind of a practical guide -- bench guide for the</p> <p>11 judge on the bond docket.</p> <p>12 I would refer your attention there.</p> <p>13 Q Anything else that you can think of</p> <p>14 beyond that bench card?</p> <p>15 A Not right now, ma'am.</p> <p>16 Q All right.</p> <p>17 MS. RYAN: I am at a good place to</p> <p>18 take a break and figure out -- so the</p> <p>19 next session that we come back will be</p> <p>20 our last session. I think we have maybe,</p> <p>21 like, 30, 45 minutes left. I'll check</p> <p>22 the time when we're done.</p> <p>23 So why don't we take a break now,</p> <p>24 make sure that I can use the last of the</p> <p>25 time efficiently, and then we'll come</p>	<p style="text-align: right;">Page 120</p> <p>1 identification.)</p> <p>2 BY MS. RYAN:</p> <p>3 Q When you have that in front of me -- or</p> <p>4 in front of you, tell me when you're ready.</p> <p>5 A I'm ready.</p> <p>6 Q Okay.</p> <p>7 A If I need to read portions of it, I'll</p> <p>8 tell you.</p> <p>9 Q Yeah. There may be pieces of it you want</p> <p>10 to read as we get into questions, but for purposes</p> <p>11 of just authenticating the document, do you</p> <p>12 recognize this document?</p> <p>13 A It is Rule CR 2 that we've talked about a</p> <p>14 little bit before.</p> <p>15 Q And this rule was issued when you were</p> <p>16 presiding judge; correct?</p> <p>17 A It was.</p> <p>18 Q But it was voted upon by all judges; is</p> <p>19 that right?</p> <p>20 A Yes.</p> <p>21 Q All -- excuse me. With a caveat to, as</p> <p>22 you listed earlier, elected district judges?</p> <p>23 A And associate judges.</p> <p>24 Q And associate judges?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 back and finish up.</p> <p>2 THE WITNESS: When do you want us --</p> <p>3 me back? It's --</p> <p>4 MS. RYAN: It's 11:40 where you are.</p> <p>5 So maybe by 11:50, 11:55. Is that okay?</p> <p>6 MS. MOORE: Sounds good.</p> <p>7 THE WITNESS: Got you.</p> <p>8 THE VIDEOGRAPHER: The time is</p> <p>9 12:41 p.m. And we're going off the</p> <p>10 record.</p> <p>11 (Whereupon, there was a recess taken</p> <p>12 from 12:41 p.m. to 12:57 p.m.)</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 12:57 p.m. And we're back on the record.</p> <p>15 BY MS. RYAN:</p> <p>16 Q Welcome back, Your Honor.</p> <p>17 I am going to ask you to take a look at</p> <p>18 what was previously marked Tab P.</p> <p>19 MS. RYAN: And I'm now going to</p> <p>20 mark, I believe it's Exhibit 5, for the</p> <p>21 record.</p> <p>22 (Whereupon, Plaintiff's Exhibit</p> <p>23 Musseman No. 5, Rule CR 2.</p> <p>24 Pre-established Bail and Initial</p> <p>25 Appearance, was marked for</p>	<p style="text-align: right;">Page 121</p> <p>1 Q Does this look like a true and accurate</p> <p>2 copy?</p> <p>3 A It does.</p> <p>4 Q Okay. Great.</p> <p>5 So I just want to cover a couple of</p> <p>6 things in this local rule. So we talked about AO-9</p> <p>7 and 10.</p> <p>8 What was the impetus of the adoption of</p> <p>9 the local rule?</p> <p>10 A To have it codified in a way that was,</p> <p>11 I -- I thought, established more permanence, but</p> <p>12 also was more readily available.</p> <p>13 Administrative orders are just that,</p> <p>14 administrative orders. And as you can imagine,</p> <p>15 administrative orders become hard to find. They're</p> <p>16 not generally available to everybody. I think we're</p> <p>17 in the process now in -- in Tulsa County of putting</p> <p>18 them online, but they're really not easily</p> <p>19 obtainable by the general public that might have</p> <p>20 questions or individualized judges in a -- in a</p> <p>21 moment.</p> <p>22 Whereas if you put it in a criminal rule</p> <p>23 like this, you put it in a local rule, not only do</p> <p>24 you have the permanence, because the body has put it</p> <p>25 in place, but you have it more readily</p>

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<p style="text-align: right;">Page 122</p> <p>1 accessible to everyone, you know. It's printed in 2 the bench books that the judges get throughout the 3 state. And it's just -- I guess I've answered the 4 question.</p> <p>5 For those reasons, it becomes permanent. 6 It becomes more readily available to everyone.</p> <p>7 Q Do you remember when the discussions 8 began about having a local rule as opposed to just 9 relying on AO-9 and 10?</p> <p>10 A No. No. I don't remember when, but I 11 can tell you in -- in my life, at least with this 12 case, there's pre litigation and post filing. 13 The lawsuit was going on. So I know 14 that. But I don't remember when or what the 15 catalyst was.</p> <p>16 Q Was there anything in the lawsuit itself 17 that caused the court to think, Let's transition 18 from these AOs to a local rule?</p> <p>19 A No, not specific. I don't think anything 20 specific about the lawsuit.</p> <p>21 Q Were there any discussions, to your 22 memory, about the lawsuit and transitioning to -- 23 from AO-9 and 10 to a local rule?</p> <p>24 A Yes and no. I mean, who -- conversations 25 to who?</p>	<p style="text-align: right;">Page 124</p> <p>1 note -- that bench card I told you about, that 2 laminated card, I -- I called the attorneys at the 3 Attorney General's Office and said, Hey, we have 4 this. Should this be in discovery?</p> <p>5 So I'm sure I called the same ones. And 6 my contact person has just turned in to be 7 Ms. Lawson, would be who I think I talked to on it.</p> <p>8 Q What about -- again, setting aside those 9 privileged conversations, what about community 10 stakeholders, were there any community stakeholders 11 or anyone else besides the judges that were involved 12 in the drafting of this local rule?</p> <p>13 A I don't think so, no.</p> <p>14 Q So did you discuss this -- the issuance 15 of this local rule with the PD before it was issued?</p> <p>16 A I do not remember. But what I will tell 17 you, if I spoke to the PD about it, it would just be 18 about the fact that we might move forward trying to 19 make it a local rule. It would not have been about 20 the details or language in the local rule.</p> <p>21 Q And what about the District Attorney's 22 Office, did you talk -- talk to the District 23 Attorney's Office about transitioning from AO-9 and 24 10 to the local rule?</p> <p>25 A Again, the same answer I gave about the</p>
<p style="text-align: right;">Page 123</p> <p>1 Q Not privileged conversations. So 2 conversations among the judges, for instance?</p> <p>3 A Oh, no. No, I don't think so.</p> <p>4 Q Okay.</p> <p>5 A I don't remember any.</p> <p>6 Q Do you know who -- do you remember who 7 first raised the idea of having a local rule as 8 opposed to AO-9 and 10?</p> <p>9 A No.</p> <p>10 Q Was it you?</p> <p>11 A No. It wasn't me.</p> <p>12 Q And you don't recall who would have 13 raised it initially?</p> <p>14 A I don't. But I know it wasn't me, 'cause 15 I remember thinking, That's a good idea.</p> <p>16 Q I was fixing to say, how -- how do you 17 remember so strongly? Okay.</p> <p>18 Who was consulted in the drafting of this 19 local rule?</p> <p>20 A I don't remember exactly who, but I would 21 have called the -- the attorneys that I have with 22 the AG's office. I -- I -- I get it with any 23 document about this case. Like the bench card, I 24 think, we did the same thing.</p> <p>25 When Guten and others prepared that bench</p>	<p style="text-align: right;">Page 125</p> <p>1 PD. I don't think so. But if I did, it would just 2 be about the fact, not the wording.</p> <p>3 Q And would the same be true for any 4 bondsmen that you had talked about -- about the 5 local rule?</p> <p>6 A I didn't talk to the bondsmen. Our 7 conversations, I think -- our conversations with the 8 bond -- or my conversation with -- with the bond 9 representative was not -- has not been going 10 since -- at that point in time.</p> <p>11 I mean, it -- once this thing got started 12 and it was done, there really was no more input, I 13 don't think, that I received from the bondsmen.</p> <p>14 Q Okay. So were you primarily responsible 15 for the drafting of this or did you rely on someone 16 else?</p> <p>17 A I relied on somebody else, like I usually 18 do.</p> <p>19 Q Do you recall who you relied on to draft 20 this local rule?</p> <p>21 A No. I lean heavily on my court 22 administrator, Vicki Cox, and I know that anything 23 that I was writing at the time that dealt with 24 bonds, I would have run by the Attorney General's 25 Office. The level of involvement that they had</p>

<p style="text-align: right;">Page 126</p> <p>1 with Vicki, I -- I don't -- I don't -- I don't know.</p> <p>2 Q So do you think it's possible that Vicki</p> <p>3 may have done the first draft of this?</p> <p>4 A It is possible. It's possible. I</p> <p>5 just -- I don't -- looking at this, this is not a</p> <p>6 general administrative order or something that Vicki</p> <p>7 does routinely. This looks -- my -- I know I'm not</p> <p>8 supposed to guess. I don't know.</p> <p>9 Q So when you presented this to the judges</p> <p>10 for a vote, did you share with them who had drafted</p> <p>11 it?</p> <p>12 A No. I would have -- no. I would have --</p> <p>13 I don't remember what I shared with them.</p> <p>14 Q So let's -- you didn't -- let me just be</p> <p>15 clear.</p> <p>16 You didn't draft this?</p> <p>17 A I did not draft this.</p> <p>18 Q Okay. And you're not sure who did draft</p> <p>19 this? You don't know?</p> <p>20 A I believe -- well, I don't know who</p> <p>21 personally drafted it. I think that the -- I think</p> <p>22 a lion's share of the work came probably from the</p> <p>23 Attorney General's Office.</p> <p>24 Q Okay.</p> <p>25 A As to who did it and to what level Vicki</p>	<p style="text-align: right;">Page 128</p> <p>1 I'm sorry. That's the best I can give</p> <p>2 you.</p> <p>3 Q Okay. So in this, there are several</p> <p>4 Oklahoma cases that are cited to make clear what the</p> <p>5 defendant's rights are under the Oklahoma State</p> <p>6 Constitution as it -- as it relates to bail; right?</p> <p>7 A Yes, ma'am.</p> <p>8 Q I don't see any reflection of the</p> <p>9 protections of the (interruption); is that right?</p> <p>10 (Whereupon, the court reporter</p> <p>11 requests clarification.)</p> <p>12 MS. RYAN: Of course.</p> <p>13 BY MS. RYAN:</p> <p>14 Q I don't see any reflections of the</p> <p>15 protections of the federal Constitution; is that</p> <p>16 right?</p> <p>17 MS. MOORE: Object to form.</p> <p>18 A I -- I'm sorry. You cut out halfway</p> <p>19 through.</p> <p>20 BY MS. RYAN:</p> <p>21 Q Yeah, of course.</p> <p>22 A You don't see the protections, and then</p> <p>23 you cut out.</p> <p>24 Q I don't see anything in this -- we just</p> <p>25 mentioned that this addresses the protections under</p>
<p style="text-align: right;">Page 127</p> <p>1 Cox participated, I don't know. But I know that</p> <p>2 when I reviewed it, I definitely had talked with the</p> <p>3 Attorney General's Office before moving forward on</p> <p>4 it.</p> <p>5 Q Okay. Do you recall -- well, it -- let</p> <p>6 me ask -- I'm trying to ask this in a way that</p> <p>7 doesn't infringe on privilege.</p> <p>8 Is there anyone else besides the attorney</p> <p>9 general that might have drafted this that we could</p> <p>10 talk to about it?</p> <p>11 A No.</p> <p>12 Q Okay. When you received it, did you</p> <p>13 revise it?</p> <p>14 A Gosh. I'm sure I did. I -- all of these</p> <p>15 cases at that time were in a bind -- they -- they</p> <p>16 just were cases I read all the time. I was so into</p> <p>17 these cases. And there were some others that are</p> <p>18 not in this administrative order. I know I read</p> <p>19 over it. I had questions about cases I wanted to</p> <p>20 put in it.</p> <p>21 So, yeah, I'm sure I had some -- I don't</p> <p>22 remember exactly what I would have done as far as</p> <p>23 drafting. But, yes, there were some cases that I</p> <p>24 wanted in it, and there were things that I probably</p> <p>25 asked questions about.</p>	<p style="text-align: right;">Page 129</p> <p>1 the -- under some Oklahoma authority for individuals</p> <p>2 as to the right to bond.</p> <p>3 This document does not include</p> <p>4 protections as to the federal Constitution as to the</p> <p>5 rights to bond; correct?</p> <p>6 MS. MOORE: Object to form.</p> <p>7 A It says what it says. I don't dispute</p> <p>8 your conclusion.</p> <p>9 BY MS. RYAN:</p> <p>10 Q Okay. Going quick -- back quickly to a</p> <p>11 couple questions from a moment ago.</p> <p>12 Do you remember where you got the first</p> <p>13 draft of this?</p> <p>14 A My memory is that Vicki Cox brought it to</p> <p>15 me. I was sitting right here at my desk.</p> <p>16 Q Okay. So you believe that --</p> <p>17 A Now, I -- that is my best memory, and</p> <p>18 I --</p> <p>19 Q And we can ask Ms. Cox that as well.</p> <p>20 So -- but if that's your memory, great.</p> <p>21 All right. Does this local rule require</p> <p>22 that the judge administering bond docket make</p> <p>23 findings as to what people can afford when it comes</p> <p>24 to bond?</p> <p>25 MS. MOORE: Object to the form.</p>

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<p style="text-align: right;">Page 130</p> <p>1 A One moment. There's language I'm going</p> <p>2 to refer to.</p> <p>3 BY MS. RYAN:</p> <p>4 Q Of course.</p> <p>5 A I think I've had it -- one moment.</p> <p>6 Sorry.</p> <p>7 I've had a chance to read it. I'm sorry.</p> <p>8 Will you ask me the question again? I went to</p> <p>9 financial.</p> <p>10 Q Yeah, of course.</p> <p>11 Does this local rule require that a judge</p> <p>12 make findings as to what a defendant has the ability</p> <p>13 to pay?</p> <p>14 A No, it does not.</p> <p>15 Q Does it require other findings if an</p> <p>16 ability to pay is -- is not available to defendant?</p> <p>17 A It lists the consideration including,</p> <p>18 first and foremost, return to court, but also the</p> <p>19 financial condition of the defendant, his or her</p> <p>20 reputation in the community, and other -- other</p> <p>21 considerations. But it says what it says.</p> <p>22 Q So it --</p> <p>23 A It doesn't require findings. It lists</p> <p>24 considerations.</p> <p>25 Q Okay. Does this local rule require the</p>	<p style="text-align: right;">Page 132</p> <p>1 the -- that bench card that I told you about.</p> <p>2 Q So to the extent that there was guidance</p> <p>3 provided about what the -- what findings should be</p> <p>4 made and how they should be made, that would be</p> <p>5 contained on that bench card?</p> <p>6 A I think so. I think -- I think I agree</p> <p>7 with you.</p> <p>8 Q So beyond that bench card -- what -- I</p> <p>9 can just be transparent. I'm trying to understand.</p> <p>10 If I was a special judge having been handed this</p> <p>11 local rule, what should I look to for guidance as to</p> <p>12 how to administer the docket?</p> <p>13 Is there anything beyond this local rule</p> <p>14 and the bench card that we just minutes -- mentioned</p> <p>15 that would have given me that guidance?</p> <p>16 A The cited cases.</p> <p>17 Q Okay. Beyond the cited cases?</p> <p>18 A Well, you read the cited cases and then</p> <p>19 the cases they cite, and you're able to read and</p> <p>20 investigate to your satisfaction. You'll have</p> <p>21 questions as the judge on any matter in front of you</p> <p>22 about what the tests are. What are the prongs to</p> <p>23 this fact -- what are the factors that I considered,</p> <p>24 not -- not just bonds, but any context as a judge?</p> <p>25 And I -- I don't -- I don't know what</p>
<p style="text-align: right;">Page 131</p> <p>1 consideration of nonmonetary conditions of release?</p> <p>2 A It allows consideration. Yes, it allows</p> <p>3 consideration of all.</p> <p>4 Q Okay. Does it require that a judge</p> <p>5 consider nonmonetary conditions of release?</p> <p>6 A Require?</p> <p>7 I don't think it requires it in -- in</p> <p>8 the -- the written context of this local rule -- of</p> <p>9 this rule.</p> <p>10 Q So stepping back from the text of the</p> <p>11 rule, was there guidance provided that accompanied</p> <p>12 this local rule as to what findings should be made</p> <p>13 as to ability to pay?</p> <p>14 A Well, we cited them to the Oklahoma</p> <p>15 cases, Brill, Gurich, and Bowman, I think. And that</p> <p>16 gives them a good idea of what findings are</p> <p>17 required.</p> <p>18 Q And was there policy guidance or training</p> <p>19 to the judges as to where those findings must be</p> <p>20 made?</p> <p>21 A Not policy guidelines where the findings</p> <p>22 must be made, no.</p> <p>23 Q Was there training given to those judges</p> <p>24 as to where and how the findings should be made?</p> <p>25 A I -- I think it would be encompassed in</p>	<p style="text-align: right;">Page 133</p> <p>1 your level of -- of familiarity is with judges and</p> <p>2 bench books, but we don't have a go-to guide, a</p> <p>3 how-to on the first time you get a TRO. Everything</p> <p>4 changes every day. You don't have a book that tells</p> <p>5 you now do this, and do this, and put it here.</p> <p>6 You go to the cases, and you read to your</p> <p>7 satisfaction. And that's my answer to you.</p> <p>8 And then this rule, not only does it</p> <p>9 describe the docket, it says the first and foremost</p> <p>10 concern. It explains every other consideration they</p> <p>11 can be making, but it empowers them to make those</p> <p>12 considerations and then gives them the cases to look</p> <p>13 at and investigate to their satisfaction.</p> <p>14 Q Yeah. And I think a lot of what we just</p> <p>15 discussed related to, like, the merits of setting</p> <p>16 bond. I guess I'm also -- I -- as you can probably</p> <p>17 tell, I'm very focused on the process, too.</p> <p>18 Beyond the bench card, the cited cases,</p> <p>19 and the local rule, is there any other guidance that</p> <p>20 judges would have been provided about the process of</p> <p>21 making their findings?</p> <p>22 A Beyond the local rules to administrative</p> <p>23 order -- what was your -- I'm sorry. I lost it.</p> <p>24 Q Local rules -- local rules, the cited</p> <p>25 cases, and the bench card, is that what is it --</p>

<p style="text-align: right;">Page 134</p> <p>1 there have been any additional guidance provided to</p> <p>2 special judges as -- as to how to make their</p> <p>3 findings procedurally?</p> <p>4 A I think there would, but not the guidance</p> <p>5 you're looking for, not policy guidance. That would</p> <p>6 have been with looking up the cases and being able</p> <p>7 to talk to supervisors or other colleagues.</p> <p>8 Q So for instance, there's not guidance</p> <p>9 that would have instructed special judges to make</p> <p>10 finding -- make factual -- oral factual findings?</p> <p>11 A Oral factual findings?</p> <p>12 I -- I -- I have not read them, no.</p> <p>13 If your question is in any of these</p> <p>14 things we've talked about? No, there's not.</p> <p>15 Q Okay. Or how any findings the judge</p> <p>16 makes should be recorded in the minutes of the</p> <p>17 docket?</p> <p>18 A Correct.</p> <p>19 Q Okay. That's all that I was getting at.</p> <p>20 All right. Let's talk about findings</p> <p>21 just a little bit more. Give me just one second.</p> <p>22 All right. Let's look at the bench card</p> <p>23 that you've mentioned a couple of times today. I</p> <p>24 think it is buried in that Redwell that you have, I</p> <p>25 believe, as Tab Y.</p>	<p style="text-align: right;">Page 136</p> <p>1 counsel as a part of discovery in this case?</p> <p>2 A No concerns at all.</p> <p>3 Q Okay. Did you create this document?</p> <p>4 A No.</p> <p>5 Q Do you know who created this document?</p> <p>6 A I -- it was always presented to me as</p> <p>7 Judge Guten had presented it --</p> <p>8 Q Okay.</p> <p>9 A -- but I'm -- I'm sure he had input, but</p> <p>10 I think Guten is the focal point of this.</p> <p>11 Q Okay. What is the purpose of a bench</p> <p>12 card?</p> <p>13 A Just practical guidance for the judge on</p> <p>14 the weekend doing the bond docket or for any judge</p> <p>15 that does the bond docket. Guten does it. But then</p> <p>16 on weekends, others share responsibility, and if he</p> <p>17 is not there one day, someone else shares the</p> <p>18 responsibility.</p> <p>19 And it's just a quick tutorial for</p> <p>20 somebody sitting on the -- doing it that day.</p> <p>21 Q Okay. So for instance -- I think you</p> <p>22 mentioned this earlier -- special judges who don't</p> <p>23 normally sit on the criminal docket, is it possible</p> <p>24 that they might have to staff bond docket on the</p> <p>25 weekend?</p>
<p style="text-align: right;">Page 135</p> <p>1 MS. RYAN: Gary, I'm going to ask</p> <p>2 you to pull up what was previously marked</p> <p>3 Tab Y. I believe it will now be</p> <p>4 Exhibit 6 -- Court Reporter, you can</p> <p>5 correct me if I'm wrong -- to this</p> <p>6 deposition.</p> <p>7 (Whereupon, Plaintiff's Exhibit</p> <p>8 Musseman No. 6, Tulsa County District</p> <p>9 Court, Bench Card: Judicial Guide to</p> <p>10 Bond Docket, was marked for</p> <p>11 identification.)</p> <p>12 BY MS. RYAN:</p> <p>13 Q Judge Musseman, do you recognize this</p> <p>14 document?</p> <p>15 A Yes. It is the bench card that I spoke</p> <p>16 of earlier.</p> <p>17 Q Is it look to be a true and direct copy</p> <p>18 of that bench card --</p> <p>19 A It looks --</p> <p>20 Q -- based on your recollection?</p> <p>21 A Yeah. It looks to be, based on my</p> <p>22 recollection.</p> <p>23 Q You have no reason to believe it's not</p> <p>24 the bench card that you were speaking of a few</p> <p>25 minutes ago, that you said you shared with your</p>	<p style="text-align: right;">Page 137</p> <p>1 A Yes.</p> <p>2 Q So is it possible that a judge without</p> <p>3 experience on a criminal docket might have to staff</p> <p>4 bond docket?</p> <p>5 A Yes.</p> <p>6 Q And so what would the role of the bench</p> <p>7 card be for that person, to the extent it's</p> <p>8 different than what you've already shared the role</p> <p>9 of the bench card is?</p> <p>10 A I -- I don't know if you cut out or I</p> <p>11 didn't understand. Would you ask it again?</p> <p>12 Q I -- I said so the role of the bench card</p> <p>13 would be just as you shared for those individuals as</p> <p>14 well that don't have that criminal experience?</p> <p>15 A Yes.</p> <p>16 Q Do you -- did you have an opportunity to</p> <p>17 revise the bench card when it was shared with you?</p> <p>18 A I think I did.</p> <p>19 Q Okay. Did you --</p> <p>20 A I --</p> <p>21 Q Oh.</p> <p>22 A I didn't revise it. I had an opportunity</p> <p>23 to review it.</p> <p>24 Q That was a better way of phrasing that.</p> <p>25 So you had the opportunity to review it,</p>

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<p style="text-align: right;">Page 138</p> <p>1 but you didn't make any revisions --</p> <p>2 A I --</p> <p>3 Q -- is that fair?</p> <p>4 A That is fair.</p> <p>5 Q Okay. Is there -- when you reviewed it,</p> <p>6 do you recall having any concerns with it or any</p> <p>7 mistakes?</p> <p>8 A No. I don't -- no, I don't.</p> <p>9 Q And on this bench card, on the top right</p> <p>10 corner on the first page, it mentions the Brill</p> <p>11 factors.</p> <p>12 Do you see that?</p> <p>13 A Yes, ma'am.</p> <p>14 Q And I think as we discussed a moment ago</p> <p>15 while looking at Local Rule 2, the Brill factors are</p> <p>16 one case under the Oklahoma Constitution -- or Brill</p> <p>17 is one case under the Oklahoma Constitution -- I'm</p> <p>18 getting some echo. I'm not sure if others are.</p> <p>19 Can you hear me?</p> <p>20 A You're -- you're cutting out. You're</p> <p>21 cutting out.</p> <p>22 Q Okay. I'll try to get closer, and you</p> <p>23 can let me know if you can't hear me. So let me</p> <p>24 restate.</p> <p>25 If you look at the top of page 1, the top</p>	<p style="text-align: right;">Page 140</p> <p>1 Q Did you discuss that with Judge Guten</p> <p>2 when you reviewed this?</p> <p>3 A No.</p> <p>4 Q Does this document provide guidance as to</p> <p>5 whether a judge is required to make findings of the</p> <p>6 ability to pay?</p> <p>7 A No.</p> <p>8 Q Okay. Does it suggest that a judge is</p> <p>9 required to consider nonmonetary conditions of</p> <p>10 release?</p> <p>11 A Let me review it.</p> <p>12 Q Of course.</p> <p>13 A Can you answer -- can you ask your</p> <p>14 question again? I'm sorry.</p> <p>15 Q Does it suggest that a judge is required</p> <p>16 to consider nonmonetary conditions of release?</p> <p>17 A Yes.</p> <p>18 Q And where are you seeing that?</p> <p>19 A Well, the front page -- we -- we were</p> <p>20 looking at the top right from Brill, but if you look</p> <p>21 at "Setting the Bond," look at the bottom, those two</p> <p>22 paragraphs.</p> <p>23 "Even if that means requiring no bond and</p> <p>24 releasing them on a personal recognizance or</p> <p>25 referring them to pretrial release." And then it</p>
<p style="text-align: right;">Page 139</p> <p>1 right, you'll notice that it sets out the Brill</p> <p>2 factors.</p> <p>3 Can you tell me what you understand the</p> <p>4 Brill factors to be?</p> <p>5 A Considerations.</p> <p>6 Q Considerations under?</p> <p>7 A When you're looking at someone -- it's --</p> <p>8 Brill -- and the case says what it says. And I'm on</p> <p>9 a civil docket now. So I hate talking about a case</p> <p>10 that I haven't read in years.</p> <p>11 But Brill sets out guidelines in which</p> <p>12 courts should consider, in my memory, really, is</p> <p>13 holding people without bail. You know, you --</p> <p>14 there's -- I think Brill v. Gulrich kind of shows</p> <p>15 the proposition that bail is not a fundamental</p> <p>16 constitutional right, and it gives guidance to</p> <p>17 judges in order to make determinations that there</p> <p>18 should be no bond or bail in a case. And it</p> <p>19 obviously cites common factors that judges consider</p> <p>20 in the traditional setting of bail in context of the</p> <p>21 broader question.</p> <p>22 Q Do you know why Brill is the case that's</p> <p>23 included here as opposed to any other case or legal</p> <p>24 authority?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 141</p> <p>1 describes more of a how-to. The -- "Pre-trial has</p> <p>2 caseworkers in the jail," and blah, blah, blah.</p> <p>3 This is how you get in touch with them.</p> <p>4 Q So can you -- I apologize. I'm missing</p> <p>5 where you are. Are you on the front or on the back?</p> <p>6 A Well, I have two pages. It's the -- it's</p> <p>7 the one with three boxes.</p> <p>8 Q Yup.</p> <p>9 A The same page with Brill. If you go to</p> <p>10 the opposite side of the page, "Setting the Bond,"</p> <p>11 go down to the bottom half of that column.</p> <p>12 Q Okay. So I think you're pointing out</p> <p>13 the: "Set of bond you believe is reasonable to</p> <p>14 ensure the arrestee's appearance back in Court, even</p> <p>15 if that means requiring no bond and releasing them</p> <p>16 on a Personal Recognizance bond"?</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Is that what you're referring to?</p> <p>20 A Yes, ma'am.</p> <p>21 Q Then it goes on to say "referring them to</p> <p>22 Pre-Trial Release."</p> <p>23 What does that mean to you, "referring</p> <p>24 them to Pre-Trial Release"?</p> <p>25 A If you need assistance with Court</p>

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<p style="text-align: right;">Page 142</p> <p>1 services, court services will work up a packet for</p> <p>2 you for that individual if -- if you want to know</p> <p>3 more about it before you put them on pretrial.</p> <p>4 Q And do -- and you -- do judges have the</p> <p>5 ability to set nonmonetary conditions of release</p> <p>6 without having received a packet from pretrial</p> <p>7 services?</p> <p>8 A Yes.</p> <p>9 Q Okay. And then --</p> <p>10 A Yes.</p> <p>11 Q -- how would they -- how would they do</p> <p>12 that? They would just set those conditions and then</p> <p>13 have pretrial execute those conditions?</p> <p>14 A Well, you can have pretrial execute those</p> <p>15 conditions or you -- you don't even have to have</p> <p>16 them executed. You can do a personal recognizance</p> <p>17 or refer them to pretrial.</p> <p>18 You don't have to utilize pretrial. If</p> <p>19 the judge wants to PR somebody, they have all the</p> <p>20 right in the world to give a personal recognizance</p> <p>21 release and set conditions.</p> <p>22 Q So --</p> <p>23 A Sometimes those conditions are supervised</p> <p>24 by pretrial. Sometimes they are not.</p> <p>25 Q This is something I was a little confused</p>	<p style="text-align: right;">Page 144</p> <p>1 ability of the presiding judge to set bond schedule</p> <p>2 amounts that are default PRs?</p> <p>3 A Yes, there is.</p> <p>4 Q And what is that?</p> <p>5 A I have no idea right now. I -- sorry. I</p> <p>6 couldn't tell you.</p> <p>7 Q We can -- I'm sure there's some other</p> <p>8 method of discovery. We can do a follow-up</p> <p>9 question.</p> <p>10 MS. RYAN: I believe that I am done.</p> <p>11 I'm going to reserve my last five minutes</p> <p>12 for any redirect should counsel for the</p> <p>13 judge and counsel for the County have any</p> <p>14 questions.</p> <p>15 MS. MOORE: We'd like to have five</p> <p>16 minutes then to confer.</p> <p>17 MS. RYAN: Okay.</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 1:31 p.m. And we're going off the</p> <p>20 record.</p> <p>21 (Whereupon, there was a recess taken</p> <p>22 from 1:31 p.m. to 1:38 p.m.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 1:38 p.m. And we're back on the record.</p> <p>25 MS. MOORE: Doug?</p>
<p style="text-align: right;">Page 143</p> <p>1 about earlier.</p> <p>2 You just said that the judge "has all the</p> <p>3 right in the world to give a personal recognizance</p> <p>4 release."</p> <p>5 A Yes.</p> <p>6 Q Is it your belief that he only has that</p> <p>7 authority at bond docket? That that's not something</p> <p>8 that can be done through the bond schedule? PR can</p> <p>9 only be given through bond docket?</p> <p>10 A Not just through bond docket. Any --</p> <p>11 anytime during the proceeding, a judge has that</p> <p>12 authority on -- with a -- on an individual case.</p> <p>13 But you understand my thought process.</p> <p>14 Whether I'm correct or incorrect, you at least</p> <p>15 understand, yes, it's not by standing order.</p> <p>16 Q So -- and just to go back to that from</p> <p>17 earlier today, it's your understanding that this</p> <p>18 statute, which I'll check on the statute number, but</p> <p>19 we together today have been preferring to as 1105,</p> <p>20 limits the presiding judge's ability to have certain</p> <p>21 offenses be default PRs on the bond schedule?</p> <p>22 A I -- I'm not confident saying that. I --</p> <p>23 I think you used the word "PR" where I would use</p> <p>24 pretrial. I think 1105 is pretrial.</p> <p>25 Q So is there any statute which limits the</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. WILSON: Yes.</p> <p>2 MS. MOORE: I'm going to let you go</p> <p>3 first.</p> <p>4 MR. WILSON: Okay.</p> <p>5</p> <p>6 CROSS-EXAMINATION</p> <p>7</p> <p>8 BY MR. WILSON:</p> <p>9 Q I've just got one question.</p> <p>10 I think earlier today, Judge, you had --</p> <p>11 in answer to a question -- I think the question</p> <p>12 talked about the Tulsa County bond schedule, and I</p> <p>13 forget what your answer was, but my question has to</p> <p>14 do with the -- the bond schedule that you amend as</p> <p>15 the presiding judge in consultation with the DA and</p> <p>16 the public defender.</p> <p>17 Is that the only schedule applicable in</p> <p>18 Tulsa County?</p> <p>19 A Yes.</p> <p>20 Q Okay. Tulsa County, as an entity,</p> <p>21 doesn't establish a bond schedule different from</p> <p>22 what the State court establishes; correct?</p> <p>23 A Yes.</p> <p>24 MR. WILSON: I don't have any other</p> <p>25 question.</p>

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<p style="text-align: right;">Page 146</p> <p>1 MS. MOORE: Okay. We're going to</p> <p>2 reserve all of our questions and pass the</p> <p>3 witness.</p> <p>4 MS. RYAN: I don't have anything</p> <p>5 else.</p> <p>6 MS. MOORE: Okay.</p> <p>7 MR. WILSON: We're done.</p> <p>8 MS. RYAN: Thank you so much, Your</p> <p>9 Honor. We appreciate all your time</p> <p>10 today. I'm sure it's not your normal</p> <p>11 day. So we appreciate it.</p> <p>12 THE WITNESS: Yes, ma'am. Everybody</p> <p>13 be safe.</p> <p>14 MS. RYAN: Yes, absolutely. Thank</p> <p>15 you.</p> <p>16 THE VIDEOGRAPHER: This --</p> <p>17 MS. RYAN: Thank you, Judge.</p> <p>18 THE VIDEOGRAPHER: This concludes</p> <p>19 today's testimony for the remote video</p> <p>20 deposition of Judge William J. Musseman,</p> <p>21 Jr.</p> <p>22 The time is now 1:39 p.m. And we're</p> <p>23 going off the record.</p> <p>24 (Whereupon, there was a discussion</p> <p>25 off the record.)</p>	<p style="text-align: right;">Page 148</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 I, Clifford Edwards, Certified Shorthand</p> <p>2 Reporter, do hereby certify that prior to the</p> <p>3 commencement of the examination, the witness was</p> <p>4 duly remotely sworn by me to testify to the truth,</p> <p>5 the whole truth and nothing but the truth.</p> <p>6 I DO FURTHER CERTIFY that the</p> <p>7 foregoing is a verbatim transcript of the</p> <p>8 testimony, that said deposition was taken by me</p> <p>9 stenographically at the time and date hereinbefore</p> <p>10 set forth, and the foregoing is a true and</p> <p>11 accurate transcript of the testimony.</p> <p>12 I FURTHER CERTIFY that I am neither of</p> <p>13 counsel nor attorney to any of the parties to said</p> <p>14 suit, nor am I an employee of any party to said</p> <p>15 suit, nor of any counsel in said suit, nor am I</p> <p>16 interested in the outcome of said cause.</p> <p>17 Witness my hand and seal as Notary Public</p> <p>18 this 31st day of December, 2020.</p> <p>19</p> <p>20 </p> <p>21</p> <p>22 Clifford Edwards</p> <p>23 Notary Public</p> <p>24 My commission expires: 9/30/2021</p> <p>25</p>
<p style="text-align: right;">Page 147</p> <p>1 MS. MOORE: Thanks. Yes, read and</p> <p>2 sign.</p> <p>3 (Thereupon, the deposition was</p> <p>4 concluded at 1:40 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 149</p> <p style="text-align: center;">J U R A T</p> <p>1 I have read the foregoing 148 pages and hereby</p> <p>2 acknowledge the same to be a true and correct record</p> <p>3 of the testimony.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 JUDGE WILLIAM J. MUSSEMAN, JR.</p> <p>11</p> <p>12 Subscribed and sworn to</p> <p>13 _____.</p> <p>14 Before me this ____ day of _____,</p> <p>15 2020.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22 My Commission Expires:</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Exhibit 7</p>

<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. _____ Line No. _____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. _____ Line No. _____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. _____ Line No. _____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. _____ Line No. _____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. _____ Line No. _____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. _____ Line No. _____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21</p> <p>22</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 NAME: JUDGE WILLIAM J. MUSSEMAN, JR.</p> <p>25</p>	<p>Page 150</p>
<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20</p> <p>21</p> <p>22</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 NAME: JUDGE WILLIAM J. MUSSEMAN, JR.</p> <p>25</p>	<p>Page 151</p> <p>Exhibit 7</p>

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